No. 2783

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

HENRY RODEN,

Plaintiff in Error.

vs.

WILLIAM DETTERING,

Defendant in Error.

TRANSCRIPT OF RECORD

Upon Writ of Error to the United States District Court for the Western District of Washington, Northern Division.

SHERMAN PRINTING & BINDING CO., SEATTLE, WASH.

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In the Superior Court of the State of Washington in and for the County of King.

WILLIAM DETTERING, Plaintiff,

vs.

HENRY RODEN, Defendant.

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AFFIDAVIT OF SERVICE.

State of Washington, County of King—ss.

A. WINDT, being first duly sworn, on oath deposes and says: That at all times hereinafter mentioned he was and now is a citizen of the United States, above the age of twenty-one years, competent to be a witness in the above entitled action and in no wise interested therein.

That on the 10th day of March, 1914, he received the hereunto attached original summons and complaint in the above entitled action, and on the 10th day of March, 1914, he served the same upon Henry Roden, the defendant in said action, by delivering to and leaving personally with Henry Roden, in King County, State of Washington, a true and correct copy of said summons, together with a copy of the complaint in said action. A. WINDT.

Subscribed and sworn to before me this 10th day of March, A. D. 1914.

B. A. NORTHRUP,

Notary Public in and for the State of Washington, residing at Seattle.

Filed in Clerk's Office, Mar. 31, 1914.
W. K. SICKELS, Clerk.
By G. A. GRANT, Deputy.

In the Superior Court of the State of Washington in and for the County of King.

WILLIAM DETTERING, Plaintiff,

vs.

HENRY RODEN, Defendant.

No.....

COMPLAINT.

The plaintiff complains of the defendant and alleges and says:

I.

That the defendant now is and at all times hereinafter named was an attorney at law duly authorized and licensed to practice law in the District of Alaska.

II.

That on or about the 1st day of February, A. D. 1910, the plaintiff employed the defendant to represent the plaintiff as an attorney at law in certain litigation then pending in the District of Alaska, and made, executed and delivered to the defendant a certain power of attorney to be used by the said defendant in the progress and settlement of such litigation for which the defendant was so employed by the plaintiff as his attorney.

III.

That on the 1st day of February, A. D. 1910, the plaintiff was the owner of Seventeen thousand five hundreds dollars ($17,500.00) in gold dust then on deposit in the Washington-Alaska Bank at Fairbanks, in Alaska, and which said gold dust was then on deposit for the purpose of securing a certain promissory note made by the plaintiff and one Henry Asheim, and made payable to J. De Journel, for the sum of Nine thousand dollars ($9,000.00).

IV.

That while the said defendant was so employed by the plaintiff to represent the plaintiff in said litigation and to represent the interests of plaintiff in

certain litigation pertaining to the interests of the plaintiff in certain mining claims, the defendant by virtue and authority of said power of attorney so made by the plaintiff to the defendant to aid the said defendant in representing plaintiff and his interests in said mining claims, wrongfully and without authority withdrew, signed away and delivered over to other persons, and wrongfully consented and permitted to be delivered over to other persons, adverse to the plaintiff, the said seventeen thousand five hundred dollars in gold dust, without any authority or right whatsoever so to do, and thereafter wrongfully and fraudulently failed, neglected and refused to pay over to, or to account to, the plaintiff for said gold dust or any part or portion thereof, and wrongfully and fraudulently denied having signed away the rights of the plaintiff in and to said gold dust, and denied having wrongfully converted or disposed of the same.

V.

That the plaintiff never knew of the facts relative to the wrongful disposition and wrongful and fraudulent disposal of said gold dust until on or about the 20th day of December, A. D. 1913, at which said time it was impossible for the plaintiff to obtain possession of said gold dust or to recover the value of the same or any part or portion thereof, and that the failure of the plaintiff to learn the facts relative to the wrongful and fraudulent disposal and diversion of said gold dust was due wholly to the wrongful, fraudulent acts and declarations of the defendant in wrongfully concealing the true facts relative to the same from the plaintiff.

VI.

That the plaintiff has been injured and damaged by the wrongful, unauthorized and fraudulent acts of the defendant as herein set forth in the full sum of Seventeen thousand five hundred dollars ($17,500.00).

AND FOR A SECOND CAUSE OF ACTION PLAINTIFF ALLEGES AND SAYS:

I.

Plaintiff hereby refers to and repeats each and all of the allegations contained in the first cause of action set forth herein, and makes said allegations and each of them parts of this his second cause of action.

II.

That while the said defendant was so acting for the plaintiff as his attorney at law, and while the plaintiff was entitled to all facts in the possession of the defendant, and to fair dealing in all respects from the defendant, the defendant wrongfully, unlawfully and fraudulently misrepresented the facts as to the disposition and diversion of the said seventeen thousand five hundred dollars' worth of gold dust, and wrongfully and untruthfully informed the plaintiff that he had never consented to any disposition of said gold dust or signed away any right of the plaintiff in or to the same or any part thereof.

III.

That by said assertions of the defendant so made as set forth in the preceding paragraph the plaintiff was led to believe and did believe that he has a good defense in a certain suit brought by Ferdinand De Journel, as Plaintiff, against this plaintiff, as defendant, in the Superior Court of the State of Washington, in and for the County of King, to recover upon said promissory note for said sum of Nine thousand five hundred dollars.

IV.

That the plaintiff, believing he had a good defense to said promissory note, employed counsel and attorneys at great cost to defend the same, and went to a large expense for attorney's fees in defending said suit, when in truth and in fact this defendant had no defense to said suit as developed upon the trial of the same in the Superior Court of the State of Washington for King County, by reason and wholly due to the wrongful and fraudulent acts of the defendant in wrongfully and fraudulently disposing and divert-

ing said Seventeen thousand five hundred dollars in gold dust.

V.

That the plaintiff was required to pay and did pay the sum of Six hundred dollars for attorney's and counsel fees in said action hereinbefore named, and the costs of said suit, amounting to the sum of $470 dollars over and above the amounts which the plaintiff would have been required to pay had the defendant truthfully stated the facts to the plaintiff relative to the wrongful diversion and disposition of said gold dust, and the plaintiff has been damaged thereby in the sum of One thousand seventy ($1070) dollars.

WHEREFORE The plaintiff demands judgment as follows:

Judgment against the defendant in the sum of Seventeen thousand five hundred dollars ($17,500.00) upon the plaintiff's first cause of action herein, and judgment against the defendant in the sum of One thousand seventy dollars upon the plaintiff's second cause of action herein, amounting in all to the sum of Eighteen thousand five hundred seventy dollars together with his costs and disbursements herein.

ARTHUR E. GRIFFIN,
Attorney for Plaintiff.

State of Washington, County of King—ss.

WILLIAM DETTERING being first duly sworn, on oath says: That he is the plaintiff in the above-entitled action; that he has read the foregoing Complaint, knows the contents thereof, and believes the same to be true.

WILLIAM DETTERING.

Subscribed and sworn to before me this 9th day of March, A. D. 1914.

ARTHUR E. GRIFFIN,
Notary Public in and for the State of Washington, residing at Seattle.

Filed in Clerk's Office Mar. 31, 1914.
W. K. Sickels, Clerk.
By G. A. Grant, Deputy.

In the Superior Court of the State of Washington for the County of King.

William Dettering, Plaintiff,
vs.
Henry Roden, Defendant.

No. .....

NOTICE.

To William Dettering, Plaintiff in the above entitled action, and to Arthur E. Griffin, his attorney:

You and Each of You Will Please Take Notace That the defendant Henry Roden, by his attorneys Farrell, Kane & Stratton, will present to the Honorable the Judges of the Superior Court of King County, in the department to which the above entitled case has been assigned, on the 30th day of March, 1914, at 1:30 o'clock P. M., or as soon thereafter as counsel can be heard, the accompanying Petition for Removal of the above entitled action to the District Court of the United States for the Western District of Washington, Northern Division, together with the Bond for Removal, a copy of which is hereto attached.

Dated this 30th day of March, A. D. 1914.

Farrell, Kane & Stratton,
Attorneys for Defendant

Filed in Clerk's Office, Mar. 30, 1914.
W. K. Sickels, Clerk.
By G. A. Grant, Deputy.

In the Superior Court of the State of Washington for the County of King.

WILLIAM DETTERING, Plaintiff,

vs.

HENRY RODEN, Defendant.

No. .....

PETITION FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

To the Honorable, the Judges of the Superior Court of the State of Washington, for King County:

The petition of Henry Roden, of Iditarod, Alaska, respectfully shows:

That the above entitled cause is a suit at common law, of a civil nature, wherein the matter in dispute now exceeds and at the time of the commencement of this suit, exceeded, the sum of Three thousand dollars ($3,000.00) exclusive of interest and costs, and that this suit, and the entire controversy therein is between the above named plaintiff William Dettering on the one side, who at the time of the commencement of this action was, ever since has been, and now is, a citizen of the United States, a citizen of the State of Washington, residing in the Western District of Washington, and residing in King County, State of Washington, and residing within the jurisdiction of this Court; and your petitioner, Henry Roden, the above named defendant, on the other side, is not now, and was not at the time of the commencement of this action, and never has been at any time whatsoever a citizen or resident of the State of Washington, but is now and at all times has been a citizen and resident of Alaska.

Your petitioner desires to remove this suit from the Superior Court of the State of Washington for King County, into the United States District Court for

the Western District of Washington, Northern Division.

Your petitioner offers and files herewith a Bond, with good and sufficient surety for its entering into the District Court of the United States for the Western District of Washington, Northern Division, within thirty days, a certified copy of the record in this suit, and for paying all costs that may be awarded by said District Court if said Court should hold that this suit was wrongfully or improperly removed thereto.

Your petitioner further prays that said surety and bond may be accepted and that this suit may be removed to the next District Court of the United States in and for the Western District of Washington, Northern Division, pursuant to the Statutes of the United States, in such case made and provided, and that no further proceedings may be had therein in this Court.

This petition is supported by the Affidavit of the plaintiff hereto attached.

FARRELL, KANE & STRATTON,
Attorneys for Petitioner.

State of Washington, County of King—ss.

J. H. KANE, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the Petitioner in the above entitled action, and makes this verification for and on behalf of said petitioner for the reason that the said Henry Roden is not in the State of Washington; that he has read the foregoing petition, knows the contents thereof, and that the same is true.

J. H. KANE.

Subscribed and sworn to before me this 27th day of March, A. D. 1914.

STANEY J. PADDEN,
Notary Public in and for the State of Washington, residing at Seattle.

State of Washington, County of King—ss.

HENRY RODEN, being first duly sworn, on his oath deposes and says: That he is the defendant named in the above entitled action; that he is now and for the past seventeen years has been a resident of the Territory of Alaska; that at the present time he is a resident and citizen of Alaska residing at Iditarod; that he is not now and has never been a resident of the State of Washington; that the Summons and Complaint in the above entitled action was served upon him as he was passing through the city of Seattle, on his way to his home in Alaska.

That he makes this Affidavit for the purpose of having said case transferred from the State Court to the Federal Court.

Dated this 10th day of March, 1914.

HENRY RODEN.

Subscribed and sworn to before me this 10th day of March, A. D. 1914.

LEROY V. NEWCOMB,
Notary Public in and for the State of Washington, residing at Seattle.

Filed in Clerk's Office, Mar. 30, 1914.
W. K. SICKELS, Clerk.
By G. A. GRANT, Deputy.

In the Superior Court of the State of Washington for King County.

WILLIAM DETTERING, Plaintiff,
vs.
HENRY RODEN, Defendant.

No. .....

BOND ON REMOVAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Henry Roden, as principal, and the Aetna Accident & Liability Co., as surety, stand held and firmly

bound unto William Dettering, the above named plaintiff, in the penal sum of Five hundred dollars ($500.00) for the payment of which, well and truly to be made, to the said William Dettering, we do hereby bind ourselves, our successors, heirs, administrators and executors, jointly and severally firmly by these presents.

Sealed with our seals and dated at Seattle, Washington, this 30th day of March, A. D. 1914.

WHEREAS The above named Henry Roden is about to file its petition in the Superior Court of the State of Washington for King County for the removal of a certain cause therein pending, wherein William Dettering is plaintiff, and Henry Roden is defendant, to the District Court of the United States for the Western District of Washington, Northern Division;

Now, the condition of this obligation is such, that if said Henry Roden shall enter in the District Court of the United States for the Western District of Washington, Northern Division, within thirty days from the date of filing said petition, a certified copy of the record in this suit, and shall well and truly pay all costs that may be awarded by said District Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF The said Henry Roden and the said The Aetna Accident & Liability Co. have hereunto set their hands and seals this 30th day of March, A. D. 1914.

HENRY RODEN,
By FARRELL, KANE & STRATTON,
By J. H. KANE, His Attorneys.
THE AETNA ACCIDENT & LIABILITY CO.
(Corporate Seal) By GEORGE H. ROURKE,
Its Res. Vice-Pres.

Attest: CHAS. H. DIAL, Its Res. Asst. Sec.
Approved this 30th day of Mch., 1914.
A. W. FRATER,
Judge Superior Court.

Filed in Clerk's Office, Mar. 30, 1914.
W. K. SICKELS, Clerk.
By G. A. GRANT, Deputy.

In the Superior Court of the State of Washington for King County.

WILLIAM DETTERING, Plaintiff,
vs.
HENRY RODEN, Defendant.

No. .....

ORDER OF REMOVAL.

Henry Roden, defendant in the above entitled case, having filed his petition to remove this cause to the District Court of the United States for the Western District of Washington, Northern Division, and having filed with said Petition his bond conditioned according to law, which bond has been approved by the Court, and said Petition and Bond having been filed within the time limited by law;

It is by the Court ordered, that the cause be and the same is hereby removed to the District Court of the United States for the Western District of Washington, Northern Division, and that all further proceedings in this Court be and the same are hereby stayed.

Done in open Court this 31st day of March, 1914.
A. W. FRATER, Judge.

Filed in Clerk's Office, Mar. 30, 1914.
W. K. SICKELS, Clerk.
By G. A. GRANT, Deputy.

State of Washington, County of King—ss.

I, W. K. Sickels, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington, in and for the County of King, do hereby certify that the foregoing is a full, true and correct transcript of the entire files and record in cause No. 100330, William Dettering vs. Henry Roden, as the same appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 18th day of April, A. D. 1914.

(Seal), W. K. Sickels, County Clerk.
By G. A. Grant, Deputy.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 21, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

AMENDED COMPLAINT.

The plaintiff complains of the defendant and alleges and says:

I.

That the defendant now is and at all times hereinafter named was an attorney at law duly authorized and licensed to practice law in the District of Alaska.

II.

That on or about the first day of February, A. D. 1910, the plaintiff employed the defendant to represent the plaintiff as an attorney at law in certain litigation then pending in the District of Alaska herein Henry Avery, D. Cascaden, Jos. Janisus, Sam Asheim and Wm. Dettering were plaintiffs and E. T. Barnett, Cook, Ridenour, McGinn and Sullivan were defendants and made, executed and delivered to the defendant a certain power of attorney to be used by the said defendant to aid in the prosecution of such litigation for which the defendant was so employed by

the plaintiff as his attorney, and which said suit was brought to collect from the defendants the value of gold dust wrongfully and unlawfully mined by the defendants from ground owned by the plaintiffs.

III.

That on the 1st day of February, A. D. 1910, the plaintiff was the owner of Seventeen thousand five hundred ($17,500) dollars in gold dust then on deposit in the Washington-Alaska Bank at Fairbanks, in Alaska, and which said gold dust was then on deposit for the purpose of securing a certain promissory note made by the plaintiff and one Sam Asheim and made payable to J. De Journel, for the sum of Nine thousand ($9,000.00) dollars.

IV.

That while the said defendant was so employed by the plaintiff as his attorney to represent the plaintiff in said litigation pertaining to certain mining claims, the defendant on or about the 17th day of February, A. D. 1910, by virtue and authority of said power of attorney so made by the plaintiff to the defendant to aid the said defendant in prosecuting said suit for gold dust wrongfully mined from said mining claims, wilfully, fraudulently, wrongfully and without authority withdrew, signed away, disposed of and delivered over to other persons, and wrongfully, wilfully and fraudulently consented and permitted to be delivered over to other persons, adverse to the plaintiff, the said seventeen thousand five hundred dollars in gold dust, without any authority or right whatsoever so to do, and thereafter wrongfully and fraudulently failed, neglected and refused to pay over to, or to account to, the plaintiff for said gold dust or any part or portion thereof, and wrongfully, wilfully and fraudulently denied having signed away the rights of the plaintiff in and to said gold dust, and denied having wrongfully converted or disposed of the same.

V.

That the plaintiff never knew the defendant had

signed away the plaintiff's right to said gold dust or that defendant had diverted or consented to the diversion or disposition thereof until on or about the 20th day of December, A. D. 1913, at which said time it was impossible for the plaintiff to obtain possession of said gold dust or to recover the value of the same or any part or portion thereof, and that the failure of the plaintiff to learn the facts relative to the wrongful and fraudulent disposal and diversion of said gold dust was due wholly to the wrongful, fraudulent acts and declarations of the defendant in wrongfully concealing the true facts relative to the same from the plaintiff.

VI.

That the plaintiff has been injured and damaged by the wrongful, unauthorized and fraudulent acts of the defendant as herein set forth in the full sum of Seventeen thousand five hundred ($17,500.00) dollars.

And for a second cause of action plaintiff alleges and says:

I.

Plaintiff hereby refers to and repeats each and all of the allegations contained in the first cause of action set forth herein, and makes said allegations and each of them parts of this his second cause of action.

II.

That while the said defendant was so acting for the plaintiff as his attorney at law, and while the plaintiff was entitled to all facts in the possession of the defendant, and to fair dealing in all respects from the defendant; the defendant wrongfully, unlawfully and fraudulently informed and told the plaintiff "That he (the defendant) had not signed away any right of the plaintiff to said gold dust; that he had nothing whatever to do with taking, signing away or disposal of said gold dust; that he (defendant) did not know who had taken the gold; that if the gold dust had

been removed or taken from the bank it had been done without his (defendant's) knowledge or consent."

III.

That each and all of said statements were false and untrue and were known to the defendant to be false and untrue when made; that they and each of them were made by the defendant to deceive, mislead, wrong, cheat and defraud the plaintiff and that they did mislead, deceive, wrong and defraud the plaintiff; that the plaintiff believed said statements to be true and relied upon the same; that plaintiff was misled and deceived thereby and relying thereon was induced to and did believe that he had a good defense in and to a certain suit brought by Ferdinand De Journel, as plaintiff, against this plaintiff, as defendant, in the Superior Court of the State of Washington, in and for the County of King, to recover upon said promissory note for said sum of Nine thousand five hundred ($9,500.00) dollars.

IV.

And relying on said statement and believing he had a good defense to said promissory note plaintiff employed counsel and attorneys at great cost to defend the same, and went to a large expense for attorney's fees in defending said suit, when in truth and in fact this defendant had no defense to said suit as developed upon the trial of the same in the Superior Court of the State of Washington for King County, by reason and wholly due to the wrongful and fraudulent acts of the defendant in wrongfully and fraudulently disposing and diverting said Seventeen thousand five hundred ($17,500.00) dollars in gold dust.

V.

That the plaintiff was required to pay and did pay the sum of Six hundred ($600.00) dollars for attorney's and counsel fees in said action hereinbefore named, and the costs of said suit, amounting to the sum of Four hundred and seventy ($470.00) dollars over and above the amount which the plaintiff would

have been required to pay had the defendant truthfully stated the facts to the plaintiff relative to the wrongful diversion and disposition of said gold dust, and the plaintiff has been damaged thereby in the sum of One thousand and seventy ($1070.00) dollars.

Wherefore the plaintiff demands judgment as follows:

Judgment against the defendant in the sum of Seventeen Thousand Five Hundred ($17,500.00) dollars upon the plaintiff's first cause of action herein, and judgment against the defendant in the sum of One thousand and seventy ($1,070.00) dollars, upon the plaintiff's second cause of action herein amounting in all to the sum of Eighteen thousand five hundred and seventy ($18,570.00) dollars together with his costs and disbursements herein.

ARTHUR E. GRIFFIN,
Attorney for Plaintiff.

Indorsed: Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, June 15, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

DEMURRER TO AMENDED COMPLAINT.

Comes now the above named defendant and demurs to the Amended Complaint of the plaintiff herein, and to the first and second causes of action set forth therein, upon the following ground, to-wit:

I.

That the plaintiff's alleged cause of action is barred by the lapse of time and by the statute of limitations, and that the plaintiff has been guilty of laches herein.

II.

That the same does not state facts sufficient to constitute a cause of action against the defendant.

FARRELL, KANE & STRATTON,
Attorneys for Defendant.

Indorsed: Demurrer to Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, June 5, 1914. Frank L. Crosby, Clerk. By Deputy.

OPINION ON DEMURRER TO AMENDED COMPLAINT OVERRULED.

Arthur E. Griffin, for Plaintiff.
Farrell, Kane & Stratton, for Defendant.

NETERER, District Judge.

This is an action commenced by plaintiff against the defendant in which he alleges in substance that about the 1st day of February, 1910, he employed the defendant as his attorney in certain litigation then pending in the District of Alaska, wherein Henry Avery, D. Cascaden, Joseph Janisus, Sam Asheim and plaintiff were plaintiffs, and E. T. Barnett *et al.* were defendants, and delievered to the defendant his certain power of attorney to be used by the defendant to aid in the prosecution of such litigation, for which the defendant was employed. The action involved the value of gold dust, wrongfully mined by the defendants from ground owned by the plaintiffs, and further alleges that the plaintiff, at the time stated, was the owner of $17,500 worth of gold dust then on deposit in the Washington-Alaska Bank, at Fairbanks, Alaska; that the gold dust was deposited with the bank as collateral security to a certain note, made by the plaintiff and one Sam Asheim, and payable to J. De Journel, in the sum of $9,000.00, and further alleges that the defendant, on or about the 17th of February, 1910, and while acting as the attorney for the plaintiff, and by virtue of a power of attorney, willfully, fraudulently, wrongfully, and without authority, withdrew the gold dust and disposed of the same to other persons, and converted the proceeds to his own use. The plaintiff alleges:

"That the plaintiff never knew the defendant had signed away the plaintiff's right to said gold dust, or that defendant had diverted, or consentend to the diversion or disposition thereof until on or about the 20th day of December, A. D. 1913, at which said

time it was impossible for the plaintiff to obtain possession of said gold dust, or to recover the value of the same, or any part thereof, and that the failure of the plaintiff to learn the facts relative to the wrongful and fraudulent disposal and diversion of said gold dust was due wholly to the wrongful, fraudulent acts and declarations of the defendant in wrongfully concealing the true facts from the plaintiff."

The plaintiff further alleges, as a second cause of action, in addition to the allegations made in the first cause of action, which are made a part of the second cause of action, by reference thereto, that,

"While the plaintiff was entitled to all facts in the possession of the defendant, and to fair dealings in all respects from the defendant, the defendant, wrongfully, unlawfully and fraudulently informed and told the plaintiff 'that he (the defendant) had not signed away the right of the plaintiff to said gold dust, and that he had nothing whatever to do with taking, signing away, or disposing of said gold dust; that he (the defendant) did not know who had taken the gold; that if the gold dust had been removed or taken from the bank, it had been done without his (defendant's) knowledge or consent,' "

and then states that all of the statements were false and untrue and known to be such by the defendant, and were made for the purpose of misleading, deceiving, wronging and defrauding the plaintiff. That the plaintiff was mislead and deceived, and relying thereon, was induced to and did believe that he had a good defense in and to a certain suit brought by Ferdinand De Journel, as plaintiff, against this plaintiff as defendant, in the Superior Court of the State of Washington, in and for the County of King, to recover upon a promissory note in the first cause of action mentioned, and relying on said statements, and believing them to be true, he employed counsel and went to large expense, when in truth and in fact there was no defense by reason and wholly due to the wrongful and

fraudulent acts of the defendant in wrongfully and fraudulently disposing and diverting the said $17,500 worth of gold dust. That plaintiff expended a total of $1,070.00, and prays judgment for $17,500.00, the value of the gold dust, and $1,070.00, the amount of money expended in this litigation.

The defendant:

"Demurs to the amended complaint of the plaintiff herein and to the first and second causes of action set forth therein upon the following grounds, to-wit:

I.

That the plaintiff's alleged cause of action is barred by the lapse of time and by the statute of limitations, and that the plaintiff has been guilty of laches herein.

II.

That the same does not state facts sufficient to constitute a cause of action against the defendant."

It is manifest that the demurrer filed in this case is a general demurrer to the complaint as a whole, and is not a separate demurrer to the separate causes of action. If either of the counts of the complaint is good, then the demurrer must be overruled.

"A demurrer lies only when an entire pleading that is the entire cause of action is involved as part of a cause of action cannot be demurred to, for if any part of the bill demurred to is good, the demurrer to the whole cannot be sustained. If the complaint contains one good cause of action demurrer to the whole complaint will not lie."

(*Estey on Pleading & Practice,* page 420, par. 3068. Citing *Weed vs. U. S.,* 65 Fed. 399, at page 402; *Crosby vs. Lehigh Valley Road Co.,* 128 Fed. 193; *Miller & Lux vs. Rickey,* 123 Fed. 604.)

An examination of the pleading, I think, will disclose the fact that the demurrer to the first cause of action is good. This cause of action, upon its face shows that the action is barred, unless the pleader will

show upon the face of the pleading that the plaintiff had no knowledge of the facts upon which the cause of action is predicated until such a time as would bring it within the statute of limitations. The averments of count one to bring the pleader within this rule above set forth must be predicated upon this statement,

"The failure of the plaintiff to learn the facts alleged with reference to the wrongful and fraudulent disposal and diversion of said gold dust was due wholly to the wrongful, fraudulent acts and declarations of the defendants in wrongfully concealing the true facts relative to the same from the plaintiff."

The most favorable statement of the rule for those seeking to avoid the bar of the statute is that in *Bailey vs. Glover,* 21 Wall. 342, 347:

"In suits in equity where relief is sought on the ground of fraud, the authorities are without conflict in support of the doctrine that where the ignorance of the fraud has been produced by affirmative acts of the guilty party in concealing the facts from the other, the statute will not bar relief provided suit is brought within proper time after the discovery of the fraud.

We also think in suits of equity the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party."

The party seeking to avoid the bar of the statute, however, may not do so by general allegations of ignorance on his part, and the rule of pleading is thus laid down in *Wood vs. Carpenter,* 101 U. S. 135, 141:

"In this class of cases the plaintiff is held to stringent rules of pleading, and especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentations was dis-

covered, and what the discovery is, so that the court may clearly see whether by ordinary diligence the discovery might not have been made." *Stearns v. Page,* 7 How. 819, 829. (Continuing)

"A general allegation of ignorance at one time and knowledge at another are of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, and how it was made, and why it was not made sooner."

Hardt v. Heiweyer, 152 U. S. 547;
Godden v. Kimmell, 99 U. S. 201;
Lansdale v. Smith, 106 U. S. 391;
Hammond vs. Hopkins, 143 U. S. 224.

There is no difference in the rule of pleading in this regard in legal and equitable actions. It is apparent that the facts alleged in the first cause of action are not sufficient to avoid the statute.

The second cause of action, in paragraph II, states the facts set out in the second quotation in this opinion, and by reference makes the first quotation which is part of the first cause of action, a part of the second cause of action. I think that both statements taken together with other averments in the second cause of action, state sufficient facts to bring the pleader within the rule announced, and that the second cause of action is not vulnerable to the demurrer by reason of said fact.

The second cause of action sets forth the statements alleged to have been made by the defendant and which were alleged to be false and fraudulent, and were relied upon by the plaintiff, and because of the reliance upon the statements and because of their falsity, which was known to the defendant, the plaintiff was damaged in the sums set out in the complaint.

In *Bullis v. O'Beirne,* 195 U. S. 617, the Supreme Court of the United States said:

"Considerable argument was made by the learned counsel for the plaintiff in error as to the essential

allegations of the pleading where relief for fraud is sought. It is said that there is no averment in the complaint in this case of knowledge or intent to deceive on the part of the plaintiff in error, but it is averred that the representations were falsely and fraudulently made with intent to further the pecuniary interest of the plaintiff in error, and were known to be false when made. Such allegations have frequently been held to be the equivalent of averments of specific intent. Indeed it is difficult to see how a statement falsely and fraudulently made can be otherwise than intended to deceive. A statement fraudulently made with knowledge of its falsity must necessarily be intended to deceive."

"The facts pleaded show deceit predicated on existing facts which statements were false, and that plaintiff was misled thereby."

(*Kimber v. Young,* 157 Fed. 199.)

"Mere general allegations of fraud are of course not sufficient. They must be pointed by specific facts, which in and of themselves, tend to impart that complexion to the transaction or that at least are susceptible of that construction."

(*Van Horst v. Amer. Hop & Barley Co.,* 177 Fed. 976.)

"The leading English case concerning the doctrine underlying action for deceit is *Pasley v. Freeman,* 3 T. R. 51, decided in 1789. From this case, and the case of *Derry v. Peek,* L. R. 14 App. Cas. 337, decided by the House of Lords in 1889, the following rule is extracted and stated in *12 English Ruling Cases,* at page 235:

'When a person, with a view to influence the conduct of another, willfully leads him into a false belief, and this other person acts accordingly to his hurt, the act is said to have been induced by fraud, and the former is liable to the latter in damages in an action for deceit. To construe the fraud, it is not essential that the defendant was, or expected to be, benefited by

the deceit; but it is essential that he should have been guilty of willful falsehood (or at least reckless disregard of truth) in the representations made.'

This, by the decided weight of authority, sets forth the American doctrine on the same subject. To sustain an action for deceit there must be fraud in the defendant, intention to deceive the plaintiff, and damage to the plaintiff. A false statement made through carelessness and without reasonable ground for believing it to be true may be evidence of fraud, but does not necessarily amount to fraud." (Citing *Ming v. Woolfolk,* 116 U. S. 599, to same effect.)

(*Pittsburgh L. & T. Co. v. Nor. Cen. Life Ins. Co.,* 197 Fed. 471.)

"Two things must concur to entitle the plaintiff to recover: First, fraudulent or false representations in relation to the condition of the property; and second such representations must have constituted the basis of the sale on the part of the purchaser, by which he was in fact misled to his damage."

(*Stratton's Independence v. Dines,* 126 Fed. 978; affirmed in 135 Fed. 449.)

The second count states facts sufficient to constitute a cause of action. The demurrer, for the reasons stated, is overruled.

JEREMIAH NETERER, Judge.

Opinion on Demurrer to Amended Complaint.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, June 30, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

SECOND AMENDED COMPLAINT.

The plaintiff complains of the defendant alleges and says:

I.

That the defendant now is and at all times hereinafter named was an attorney at law duly authorized and licensed to practice law in the District of Alaska.

II.

That on or about the 1st day of February, A. D. 1910, the plaintiff employed the defendant to represent the plaintiff as his attorney at law in certain litigation then pending in the District of Alaska wherein Henry Avery, D. Cascaden, Jos. Janisus, Sam Asheim and Wm. Dettering were plaintiffs, and E. T. Barnett, Cook and Ridenour and McGinn and Sullivan were defendants and made, executed and delivered to the defendant a certain power of attorney to be used by the said defendant to aid in the prosecution of such litigation for which the defendant was so employed by the plaintiff as his attorney, and which said suit was brought to collect from the defendants the value of certain gold dust wrongfully and unlawfully mined by the defendants and wrongfully appropriated to their own use from ground owned by the plaintiffs.

III.

That on the 1st day of February, A. D. 1910, the plaintiff was the owner of Seventeen thousand five hundred ($17,500) Dollars in gold dust then on deposit in the Washington-Alaska Bank at Fairbanks, in Alaska, and which said gold dust was then on deposit for the purpose of securing a certain promissory note made by the plaintiff and one Sam Asheim and made payable to J. de Journel, for the sum of Nine thousand ($9,000) dollars.

IV.

That while the defendant Roden was so employed by the plaintiff as his attorney to represent the plaintiff in said litigation pertaining to gold wrongfully mined and taken from certain mining claims, on or about the 17th day of February, A. D. 1910, by virtue and under authority of a power of attorney, which the plaintiff had executed to the defendant at

the defendant's request to aid the defendant in said litigation and for no other purpose, the defendant conspiring with the defendants in said suit to wrong, cheat and defraud the plaintiff, did wrongfully, unlawfully and without authority and without the knowledge or consent of the plaintiff, take, assign away and dispose of the said Seventeen thousand five hundred dollars worth of gold dust then and theretofore on deposit in the said Washington-Alaska Bank, and did wrongfully detain and fail to pay over to the plaintiff or to account to the plaintiff for said gold dust or any part or portion thereof or any part of the proceeds thereof, and has at all times since the said 17th day of February wrongfully and untruthfully stated to and informed the plaintiff that he the defendant did not take, assign away or dispose of said gold dust and that he the defendant had nothing whatever to do with the taking, assigning away or disposing of said gold dust and had no knowledge of what disposition was made of the same or any part or portion thereof; and defendant has at all times detained and wrongfully failed to pay to or account for the proceeds of said gold dust so taken and disposed of or any part thereof.

V.

That the plaintiff never knew the defendant had taken, assigned away or disposed of said Seventeen thousand five hundred dollars worth of gold dust or that defendant had detained the proceeds thereof until on or about the 20th day of December, A. D. 1913, at which said time it was impossible for the plaintiff to obtain possession of said gold dust, the proceeds thereof or any part or portion thereof; and that the failure of the plaintiff to learn the facts of the wrongful, fraudulent taking, disposal and conversion thereof and detaining of the proceeds thereof was wholly due to wrongful acts and declarations of the defendant in wrongfully and untruthfully informing the plaintiff that he the defendant had not taken, assigned away or disposed of said gold dust, and that he the defendant

had nothing whatever to do with the taking, assigning away or disposal of said gold dust; that said statements were made to deceive the plaintiff and they did deceive the plaintiff; that the defendant E. T. Barnett in said suit was the President and had full control of said Washington-Alaska Bank and said defendant and said Barnett conspired together to keep the plaintiff from ascertaining the facts of the taking, assigning away and disposal of said gold dust and detaining of the proceeds thereof; that immediately upon the return of plaintiff to Fairbanks, Alaska, after the taking and converting of said gold dust, plaintiff made many inquiries of the officers of said bank and others and could get no information whatever as to the taking, assigning away or disposal of said gold dust or detaining of the proceeds thereof, and nothing was recorded from which plaintiff could obtain any information as to the taking, assigning away or conversion of said gold dust or the proceeds thereof.

VI.

That the plaintiff and defendant were both residents of the District of Alaska at the time the defendant took and assigned away said gold dust and at the time the defendant converted the proceeds thereof to his own use, although at said time of said taking, assigning away and conversion the plaintiff was temporarily out of said district, and the defendant was in Alaska at all of said times and ever since; and that at all of said times the statutes of limitations in effect at all of the times herein set forth and now in said District of Alaska are as follows:

Section 835.

"Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited shall only be taken by answer, except

as otherwise provided in section eighty hundred and ninety."

Section 836.

"The periods prescribed in section eight hundred and thirty-five of this act for the commencement of actions shall be as follows:

Within ten years actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within ten years before the commencement of the action: Provided, in all cases where a cause of action has already accrued, and the period prescribed in this section within which an action may be brought has expired or will expire within one year from the approval of this act, an action may be brought on such cause of action within one year from the date of the approval of the act."

Section 837. Within ten years.

"First. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States.

Second. An action upon a sealed instrument."

Section 838. Within six years.

"First. An action upon a contract or liability, express or implied, excepting those mentioned in section eight hundred and thirty-seven.

Second. An action upon a liability created by statute, other than a penalty or forfeiture;

Third. An action for waste or trespass upon real property;

Fourth. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof."

Section 839. Within three years.

"First. An action against a Marshal, Coroner, or Constable upon a liability incurred by the doing of an act in his official duty, including the nonpayment

of money collected upon an execution. But this section shall not apply to an action for an escape;

Second. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the United States, except where the statute imposing it prescribed a different limitation."

Section 840. Within two years.

"First. An action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not herein especially enumerated;

Second. An action upon a statute for a forfeiture or penalty to the United States."

Section 841. Within one year.

"An action against the marshal or other officer for the escape of a person arrested or imprisoned on civil process."

Section 842.

"An action upon the statute for the penalty given in whole or in part to the person who will prosecute for the same shall be commenced within one year after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the United States, by the District Attorney."

Section 843.

"An action for any cause not hereinbefore provided for shall be commenced within ten years after the cause of action shall have accrued."

VII.

That the plaintiff has been injured and damaged by the wrongful, unauthorized and fraudulent acts of the defendant as herein set forth in the full sum of Seventeen thousand five hundred ($17,500.00) dollars.

AND FOR A SECOND CAUSE OF ACTION PLAINTIFF ALLEGES AND SAYS:

1.

Plaintiff hereby refers to and repeats each and all of the allegations contained in the first cause of action set forth herein, and makes said allegations and each of them parts of this his second cause of action.

2.

That while the said defendant was so acting for the plaintiff as his attorney at law, and while the plaintiff was entitled to all facts in the possession of the defendant, and to fair dealing in all respects from the defendant; the defendant wrongfully, unlawfully and fraudulently informed and told the plaintiff "That he (the defendant) had not signed away any right of the plaintiff to said gold dust; that he had nothing whatever to do with taking, assigning away or disposal of said gold dust; that he (the defendant) did not know who had taken the gold; that if the gold dust had been removed or taken from the bank it had been done without his (defendant's) knowledge or consent."

3.

That each and all of said statements were false and untrue and were known to the defendant to be false and untrue when made; that they and each of them were made by the defendant to deceive, mislead, wrong, cheat and defraud the plaintiff and they did mislead, deceive, wrong and defraud the plaintiff; that the plaintiff believed said statements to be true and relied upon the same; that plaintiff was misled and deceived thereby and relying thereon was induced to and did believe that he had a good defense in and to a certain suit brought by Ferdinand De Journel, as plaintiff, against this plaintiff, as defendant, in the Superior Court of the State of Washington in and for the County of King, to recover upon said promissory note for said sum of Nine thousand five hundred ($9500.00) Dollars.

4.

And relying on said statement and believing he had a good defense to said promissory note, plaintiff employed counsel and attorneys at great cost to defend the same, and went to a large expense for attorney's fees in defending said suit, when in truth and in fact this defendant had no defense to said suit as developed upon the trial of the same in the Superior Court of the State of Washington for King County, by reason and wholly due to the wrongful and fraudulent acts of the defendant in wrongfully and fraudulently disposing and diverting said Seventen thousand five hundred *($7500.00)* dollars in gold dust.

5.

That the plaintiff was required to pay and did pay the sum of Six hundred ($600.00) dollars for attorney's and counsel fees in said action hereinbefore named, and the costs of said suit, amounting to the sum of Four hundred and seventy ($470) Dollars over and above the amount which the plaintiff would have been required to pay had the defendant truthfully stated the facts to the plaintiff relative to the wrongful diversion and disposition of said gold dust, and the plaintiff has been damaged thereby in the sum of One thousand and seventy ($1070) dollars.

WHEREFORE The plaintiff demands judgment as follows:

Judgment against the defendant in the sum of Seventeen thousand five hundred ($17500.00) dollars upon the plaintiff's first cause of action herein, and judgment against the defendant in the sum of One thousand and seventy ($1070.00) dollars upon the plaintiff's second cause of action herein amounting in all to the sum of Eighteen thousand five hundred and seventy ($18,570.00) dollars together with his costs and disbursements herein.

ARTHUR E. GRIFFIN,
Attorney for Plaintiff.

Indorsed: Second Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 16, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

ANSWER TO SECOND AMENDED COMPLAINT

Comes now the above named defendant by his attorneys Farrell, Kane & Stratton, and for answer to the second amended complaint, denies and alleges:

I.

This defendant admits the allegations contained in paragraph I of said second amended complaint.

II.

Referring to paragraph II of said second amended complaint, this defendant admits that the plaintiff executed and delivered to him a certain power of attorney; and this defendant denies each and every other allegation in said paragraph II contained, and specifically denies that he was employed by the plaintiff or represented the plaintiff as his attorney at law.

III.

Referring to paragraph III of said second amended complaint this defendant denies the allegations therein contained.

IV.

Referring to paragraphs IV and V of said second amended complaint this defendant denies the allegations therein contained and each and every part thereof.

V.

Referring to paragraph VI of said second amended complaint this defendant admits that all the times mentioned in said complaint this defendant was a resident of the District of Alaska, and as to all other allegations in said paragraph VI contained this defendant says that he has neither knowledge or information sufficient to form a belief as to the truth or falsity thereof and therefore denies the same.

VI.

Referring to paragraph VII of said second amended complaint this defendant denies the allegations therein contained, and specifically denies that the plaintiff has been damaged in the sum of $17,500 or in any other sum whatsoever.

ANSWER TO SECOND CAUSE OF ACTION.

I.

Referring to paragraphs I, II and III of the second cause of action set forth in plaintiff's second amended complaint, this defendant denies the allegations therein contained and each and every part thereof.

II.

Referring to paragraphs IV and V of the second cause of action set forth in plaintiff's second amended complaint this defendant says that he has neither knowledge nor information sufficient to form a belief as to the truth or falsity of the allegations therein contained and therefore denies the same and each and every part thereof.

WHEREFORE, Defendant, having fully answered, prays that he may be discharged with his costs and disbursements incurred herein.

FARRELL, KANE & STRATTON,
Attorneys for Defendant,
1011 American Bank Bldg.,
Seattle, Wash.

Indorsed: Answer to Second Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 18, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

AMENDED ANSWER TO SECOND AMENDED COMPLAINT.

Comes now the above named defendant, by his attorneys Farrell, Kane & Stratton, and for answer to

the second amended Complaint herein, denies and alleges:

I.

This defendant admits the allegations contained in paragraph I of said second amended Complaint.

II.

Referring to paragraph II of said second amended Complaint, this defendant admits that the plaintiff executed and delivered to him a certain power of attorney; and this defendant denies each and every other allegation in said paragraph II contained, and specifically denies that he was employed by the plaintiff or represented the plaintiff as his attorney at law.

III.

Referring to paragraph III of said second amended Complaint, this defendant denies the allegations therein contained.

IV.

Referring to paragraphs IV and V of said second amended Complaint this defendant denies the allegations therein contained and each and every part thereof.

V.

Referring to paragraph VI of said second amended Complaint, this defendant admits that at all the times mentioned in said Complaint this defendant was a resident of the District of Alaska; and this defendant admits that the Statutes relating to the limitation of action in effect at all of the times in said second amended Complaint mentioned in the District of Alaska are as set forth and pleaded in said paragraph VI of said second amended Complaint.

VI.

Referring to paragraph VII of said second amended Complaint, this defendant denies the allegations therein contained, and specifically denies that the plaintiff has been damaged in the sum of $17,500.00 or in any other sum whatsoever.

FOR A FURTHER, SEPARATE, AND AFFIRMATIVE DEFENSE To the First cause of action set forth in the

second amended Complaint of the plaintiff herein, this defendant alleges:

I.

That at all of the times mentioned in the said second amended Complaint, this defendant was and still is a resident of the District of Alaska; and that during all of the said times there was and still is in full force and effect in the said District of Alaska certain laws relative to the limitations of actions, which laws are as follows:

Section 835.

"Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited shall only be taken by answer, except as otherwise provided in section eight hundred ninety."

Section 840. Within two years.

"First. An action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not herein specially enumerated;

Second. An action upon a statute for forfeiture or penalty to the United States."

II.

That the Plaintiff returned to Fairbanks, Alaska, only a few days after the 17th day of February, 1910, the date upon which the settlement of the litigation in which the defendant represented the plaintiff was settled; and that the said plaintiff knew of the said settlement, both by reason of the common talk in and about the town of Fairbanks, of the settlement of the celebrated litigation on Dome Creek; and also by the court records where the said litigation was pending and by the records of the recorder's office at Fairbanks, Alaska, and also having been fully advised by this defendant.

That the said plaintiff, by the exercise of ordinary

care could and should have known of all the facts relating to the said settlement, and the said $17,500.00 of gold dust on deposit in the Washington-Alaska Bank was included in the said settlement; that the plaintiff, with full knowledge of all of the facts and circumstances of the said settlement and of the disposition of the said gold dust, delayed bringing any action to assert any claim against this defendant by reason of the said settlement or the facts set forth in his second amended Complaint herein, until more than three (3) years after the said settlement was made, and after the said plaintiff had full knowledge of all of the facts relative thereto; that by reason of the said delay the plaintiff's alleged claim or cause of action herein is barred by the statute of limitation in the said District of Alaska; and the plaintiff has been guilty of laches which would bar any recovery against this defendant.

ANSWER TO SECOND CAUSE OF ACTION.

I.

Referring to paragraphs I, II and III of the second cause of action set forth in plaintiff's second amended Complaint, this defendant denies the allegations therein contained and each and every part thereof.

II.

Referring to paragraphs IV and V of the second cause of action set forth in plaintiff's second amended complaint, this defendant says that he has neither knowledge nor information sufficient to form a belief as to the truth or falsity of the allegations therein contained, and therefore denies the same and each and every part thereof.

WHEREFORE Defendant, having fully answered, prays that he may be discharged with his costs and disbursements incurred herein.

FARRELL, KANE & STRATTON,
Attorneys for Defendant.

Indorsed: Amended Answer to Second Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 25, 1915. Frank L. Crosby, Clerk. By E. M. L. Deputy.

NOTICE TO PRODUCE.

To the above named defendant and to Farrell, Kane & Stratton, attorneys for the above named defendant:

You and each of you are hereby notified and will please take notice hereby that the plaintiff in the above entitled action demands an inspection of each of the following instruments in writing, now in the possession of the defendant, and demands that said instruments and each of them be produced for inspection before the trial of this cause and to be used in evidence at the trial, each of the following instruments:

First, That certain instrument in writing signed by Harry Havery, Sam Asheim, H. D. Cascaden, J. F. Hilcher, James Gianakas and William Dettering authorizing you to settle, for the sum of One hundred thousand ($100,000.00) dollars, that certain suit then pending in the United States District Court at Fairbanks, Alaska, in which said Harry Havery, was plaintiff and Gus Peterson, E. T. Barnett, Henry Cook, J. C. Ridenour, John L. McGinn, and M. L. Sullivan were defendants, and which said suit was brought to recover damages against the defendants for trespassing upon certain mining claim owned by the plaintiff, being Bench Placer Mining Claim No. 2 on the right limit, below Discovery, on Dome Creek at Fairbanks' mining district of Alaska.

Second, That certain instrument signed by Sam Asheim, in which said Asheim acknowledged that the plaintiff, William Dettering, was the owner of a one-half interest in the $17,500.00 worth of gold dust deposited in the Washington-Alaska Bank at Fairbanks, Alaska, and in which said Sam Asheim ad-

mitted that said suit brought by him, the said Asheim, was in fact brought in the interest of himself and the plaintiff, William Dettering, and which said instrument was delivered to and left with you by the plaintiff on or about the 7th day of February, A. D. 1910.

GRIFFIN & GRIFFIN,
Attorneys for Plaintiff.

Indorsed: Notice to Produce. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 23, 1915. Frank L. Crosby, Clerk. By E. M. L. Deputy.

VERDICT.

We, the jury in the above entitled cause, find for the plaintiff in the sum of $6500. Six thousand five hundred dollars.

R. W. LITTLETON, Foreman.

Indorsed: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 26, 1915. Frank L. Crosby, Clerk. By E. M. L. Deputy.

DEFENDANT'S PROPOSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 23rd day of March, 1915, the above entitled cause came on for trial before the above entitled court, Judge Jeremiah Neterer presiding;

WHEREUPON, a jury having been duly and regularly empanelled, the plaintiff appearing therein by his attorneys, Messrs. Griffin & Griffin, and the defendant appearing by his attorneys, Farrell, Kane & Stratton, the following proceedings were had:

"MR. GRIFFIN: I want to file some papers served upon counsel that have not been filed yet. We served notice to produce certain papers, one of which was the

agreement signed by the owners that Mr. Roden should not settle the case for less than one hundred thousand dollars.

MR. KANE: There was never any such agreement. We have no such paper. We never had it, as we will show.

MR. GRIFFIN: We also asked you to produce the declaration of trust made by Mr. Asheim at the time the suit was brought in his name for the specific performance of the contract.

MR. KANE: We haven't the document you mention, but we admit such a document as this was once executed by Mr. Asheim to Mr. Dettering. As in the demand of counsel, counsel makes a demand that a second instrument signed by Sam Asheim, in which Asheim acknowledged that Mr. Dettering was the owner of the half interest in the seventeen thousand five hundred dollars in gold dust deposited in the Washington-Alaska Bank at Fairbanks, and acknowledged that Sam Asheim admitted that said suit brought by him was in fact brought by him in the interest of himself and plaintiff, we admit that there was such an agreement.

MR. GRIFFIN: You don't produce the one we ask for.

MR. KANE: No."

WILLIAM DETTERING, the plaintiff, a witness for himself, being sworn, testified as follows:

My name is William Dettering. I am the plaintiff in this case. My business is a miner, ever since I was eighteen years old; placer mining, and quartz mining occasionally. I went to Alaska in 1907, and have been there off and on ever since; 1907 in the summer time I went in there, and in the winter time I have been out here most of the time.

I bought from John Klonos his right to the option agreement made between him and Sam Asheim; that agreement was in writing. I have endeavored to find this agreement, but have been unable to do so. When

I came out of Alaska in 1912, in February, I delivered all my papers over to Mr. Roden. I do not know where that agreement is now.

MR. KANE: I will admit that Klonos assigned whatever interest he had in the seventeen thousand five hundred dollars to Sam Asheim, and Dettering, half each.

Q. Who was the owner of the entire interest of the seventeen thousand five hundred dollars in gold dust?

MR. KANE: We object to that as incompetent and immaterial. It is admitted here it was assigned by Mr. Klonos to Sam Asheim for the benefit of both.

THE COURT: He may answer the question, while it is a conclusion under the statements of counsel. Exception allowed. (St. p. 31.)

I was the owner of the entire interest in the $17,500 gold dust. I told Mr. Roden before I came out of Alaska in the winter of 1910, that I owned the $17,500 in gold dust. I told him Sam had not paid anything toward the purchase price of this gold dust. Mr. Roden was my attorney. I know that there was $17,500 in gold dust, provided for in the agreement, deposited in the Washington-Alaska Bank at Fairbanks, Alaska, under this option agreement made between Klonos and Manson.

THE COURT: The witness may answer the other question as to what agreement he and Asheim had with relation to the ownership of this gold dust.

Q. You may answer now what agreement you had with Mr. Asheim as to the ownership of that seventeen thousand five hundred dollars in gold dust?

MR. KANE: Now, if your Honor please, I want to state further that Mr. Asheim is now deceased, and I object to this testimony on the ground that it is incompetent, irrelevant and immaterial, and he is attempting to testify against the interests of a deceased person, and as to what agreement they had between

themselves, your Honor, certainly we cannot be bound by it.

THE COURT: You say Asheim is dead?

MR. KANE: Yes, your Honor, Asheim is dead and I can prove that by the witness himself.

MR. GRIFFIN: This is not a suit against an estate.

THE COURT: The objection is overruled, in view of the conversation had with Mr. Roden at the time. Exception allowed.

Q. You may state what the agreement was between you and Asheim in regard to the ownership of the seventeen thousand five hundred dollars?

MR. KANE: We make the same objection.

THE COURT: The same ruling. Exception allowed.

A. Asheim was to own half of this gold dust provided he paid me half of fifty-five hundred dollars. I paid fifty-five hundred for this agreement, you see. Now, the gold dust was not in the bank when I paid it. It was during the panic and I borrowed the money from the New York Life Insurance Company.

MR. KANE: I object to this. I can understand why this story is attempted to be injected.

THE COURT: I permitted him to answer but he is going beyond that.

MR. GRIFFIN: Just state what the agreement was, when, if at all, he was to come in for his share?

A. If he wanted to come in he could pay half of the fifty-five hundred dollars, twenty-seven hundred dollars, and he would hold a half interest.

(St. pp. 32-33.)

There was no gold dust under that option agreement at that time. I did not know there would be the full $17,500. It was a chance in mining, and you have to figure that you lose one out of three, and it was a business proposition with me; if a man makes one venture out of three he makes money.

Q. Did Mr. Asheim at any time pay to you half

the amount that you paid for the assignment of the option?

MR. KANE: I make the same objection.

THE COURT: Same ruling. Exception allowed.

Q. Did you ever tell Mr. Roden when he was your attorney that Asheim had never paid you any part of that consideration for the seventeen thousand five hundred dollars?

A. I told Mr. Roden the full particulars.

(St. p. 34.)

After this $17,500 had been fully paid in under the agreement the gold dust was kept in the Washington-Alaska Bank at Fairbanks, Alaska. I borrowed $8,000 there from that Bank. I gave the gold dust as security. I do not know what became of the gold dust. The note was put with the gold dust for security, and the gold dust was held as security for the note. Mr. de Journel afterwards took up the $8,000 note; he was an attorney; and added interest and made out a new note for $9,000.

MR. KANE: I cannot see the materiality of this and therefore I object to it.

THE COURT: Let him answer. Exception requested and allowed.

(St. p. 36.)

The new note was made for exactly $9141.00.

Q. To whom was the new note made?

MR. KANE: I make the same objection.

THE COURT: He may answer. (Exception requested and allowed.)

A. To Mrs. de Journel.

Q. What was done with reference to the gold dust, with reference to this new note, if anything?

MR. KANE: We object to this as suggestive and leading, and irrelevant and immaterial.

THE COURT: Proceed.

(St. pp. 36-37.)

The note stayed right in the Bank; so far as I know the gold dust laid there too; it was the under-

standing that the gold dust should stay there until the note was paid, to secure the note given to Mrs. de Journel. Later on a suit was brought for specific performance on that contract between Klonos and Mark Manson; it was brought in the name of Mark Manson; it was brought to obtain possession of the gold dust. Mr. de Journel did get me to make an assignment.

A. This assignment is not like a bill of sale. If you give an assignment to collect money or the like of that, and Mr. de Journel got me to make an assignment, because I could not be sure of being there. I was on Dome Creek. We had twenty-four men working, and he said to assign it to Asheim, that is to Sam Asheim.

(St. p. 38.)

At the time of the assignment of the $17,500 in Asheim's name I believe Asheim gave me a declaration of trust to the effect that it was made in my interest. Asheim was staying at Fairbanks at the time the suit was brought; he had a cigar store. I was sixteen miles from there, at No. 7 on Dome; I had a lease there; there were no railroad conveniences, I had to walk every foot of it. The assignment was made because it wanted an order of Court to get this released to put in the bank. Mr. de Journel was my attorney in that suit; that suit had not been finally determined when I left Fairbanks in 1910; you see it required an order of Court—that was all, there was no suit.

Mr. de Journel went outside, to 'Frisco; when he left Alaska he left his business in the hands of Mr. Nye. Mr. Nye had charge of that suit. When Asheim gave me this declaration of trust I kept it until I went outside; I then gave it to Mr. Roden because he got my power of attorney and I want him to look after my business until I came back. I told him there was a note at the Washington-Alaska Bank for $9,100, and that had to be paid before the gold could leave the bank. I told him to look after my business in general, and he drew up the power of attorney himself; he said

the best thing to do was to make a general power of attorney, which he made out and I signed it.

(Plaintiff's Exhibit "A," being a certified copy of the power of attorney, is admitted in evidence without objection.)

(St. p. 40.)

The time I made this power of attorney Mr. Roden was looking after my business in Alaska; after I left there he had my power of attorney.

Q. Did you give him any directions to draw out the money?

MR. KANE: We make the same objection.

THE COURT: He may answer that now after the other testimony. Exception allowed.

I did not give him any directions to assign it to any person. I told him the gold dust was to remain there to secure the note; there was no other understanding between me and him. When I gave him the power of attorney I left for the States and I got back in about three weeks. I had some property here to look after, and made a flying trip. I was gone six weeks when I was back in Alaska; I didn't think it was safe for me to leave without a power of attorney. When I got back up to Fairbanks I saw Mr. Roden. I heard about some settlement of the suit that was pending in the name of Mr. Havery, and in which Mr. Roden was representing me and the other interested parties; I heard the rumor here in Seattle, but I wasn't sure and I didn't know a settlement had been brought about. I went back up there and had a conversation in regard to the $17,500 when I went back, with Mr. Roden. You see, he blamed everything on Mr. Nye. The way he told me he said Nye released the gold dust and McGinn took it and put it in the pot. I naturally supposed that when Nye released it the note was paid. In an effort to find out what disposition was made of the $17,500 of gold dust, I went to the Bank. I asked Mr. Roden at that time whether he had assigned away my interest in the gold dust and he said he had not.

I tried to find out and he told me Nye released it; the gold dust was there to secure the note—that is the note could not leave the bank; the gold dust could not leave the bank until the note was paid, and I was under the impression that the note was paid. Later on demand was made upon me for the payment of the note. I then had a conversation with Mr. Roden about it and he told me that Nye released the dust, that he had nothing to do with it and did not have it for collection; he told me that he had received nothing and had nothing to do with it. I then went to the Bank and tried to find out; I saw George Wesch, manager of the Bank, and inquired of him; he did not appear to know what became of the gold dust; I endeavored to find out whether there was any record in the Bank in regard to the disposition of the gold dust, but I could not find any record. I employed attorneys, Mr. Jennings and Mr. Pratt, in the way of searching the records in the Recorder's office at Fairbanks to ascertain what became of the gold dust. Mr. Jennings looked over the record and there was nothing of record. I went with him.

Q. Could you find a thing from any person in the bank or from Mr. Roden or anybody as to what became of your gold dust?

A. No, I could not.

Later on I went to Iditarod. I left there about the first of June, 1910; I saw Mr. Roden there and had a talk with him in regard to the gold dust; he always told me that he had nothing whatsoever to do with the dust; he settled the damage suit—that was all. He told me at Iditarod that he had nothing to do with it—that de Journel had it for collection, and that he blamed Nye; he said that he had nothing to do with it.

Later on a suit was brought by de Journel on the note. Shortly before that suit was brought in the Superior Court of King County, Washington, I went to Juneau to see Mr. Roden, and I talked the matter over with him there. I told him to give me a written state-

ment for my attorneys there and before I would bring any suit against de Journel, and so he did; he gave me a written statement. He told me he had nothing to do with the gold dust; that Nye released it—he told me that again; he made a statement for me at that time. This is the statement that he made; that is Mr. Roden's signaure at the end of the statement; it is in the same condition it was when I received it except for the marginal figures.

(Plaintiff's Exhibit "B," the same being the Statement received from Roden, referred to, is admitted in evidence and read to the jury.)

(St. p. 46.)

The Court then adjourned, taking a recess until Wednesday morning at 10 o'clock.

Wednesday morning—Mr. Dettering on the stand for further direct examination.

At the time Mr. Roden delivered to me the statement just read in evidence he made no statement as to whether or not he had signed away my right in the gold dust; he told me he didn't sign it away. That statement was made about six months before the trial of the de Journel case. Mr. Roden met in Mr. Griffin's office in Seattle, about ten days before the trial in the Superior Court of King County, and he dictated to Mr. Griffin's stenographer a statement of this de Journel case.

MR. GRIFFIN: I understand that you are willing that this shall go in?

MR. KANE: I am willing to admit it is some statement of this character, but not this one here.

MR. GRIFFIN: To avoid the calling of my stenographer as a witness I understand you are willing to admit Mr. Roden dictated some statement.

MR. KANE: Some such statement. That may not be the exact statement. We are not willing to admit that.

MR. GRIFFIN: Well, you admit it is substantially correct?

MR. KANE: In some things it is correct and in some things it is not correct.

Q. I hand you this purported statement, Mr. Dettering, and ask you to refresh your memory, and from that statement refresh your memory. From that statement, state whether or not in my office in the city of Seattle, shortly before the case of de Journel against you as defendant was tried in the Superior Court of King County, Mr. Roden made a statement to you which you find in this statement.

A. Yes, he did.

Q. You have read that over, have you?

A. Yes, I have.

MR. GRIFFIN: We offer this in evidence.

MR. KANE: I am not objecting to the typewritten part on the ground that Mr. Roden didn't dictate it. Mr. Roden, we admit, did dictate some statement, but I do object to this pencil memorandum that was made by someone other than Mr. Roden, and that is attached to this typewritten statement. I don't believe that it should be admitted. Now, if they made those notes—(Addressing Mr. Griffin) You don't contend that Mr. Roden made those notes?

MR. GRIFFIN: Those notes are in my handwriting.

MR. KANE: I object to them as self-serving declarations and incompetent.

MR. GRIFFIN: If it is objected to for the reason that I did not call the witness' attention to each specific item the objection might be good. I find authorities which sustain such objection, but if counsel will waive that feature of it it will save time in the matter of examining the plaintiff.

MR. KANE: I am not raising the objection to the typewritten portion, but to this portion, I am.

MR. GRIFFIN: Then you are willing that the typewritten may be admitted?

MR. KANE: Yes, but not admitting that all the statements therein are correct by any means.

MR. GRIFFIN: With that understanding I will detach the pencil memorandum from the other, and offer the typewritten statement.

(The same was marked plaintiff's exhibit "C" and admitted in evidence.)

(St. pp. 48-49.)

Mr. Roden also stated at that time that Mr. Nye released the gold dust, and took the gold dust,—that is the gold dust in the Washington-Alaska Bank, amounting to $17,500; at that time he also stated that Nye released it and gave it to McGinn. Mr. Roden stated that.

A. He told me that Nye released it and gave it to McGinn, as near as I can remember.

Q. Did he make any statement as to whether or not Nye knew that Asheim should have signed the note?

MR. KANE: We object to this as leading and suggestive.

THE COURT: He ought to know. Let him state what was said. Exception allowed.

A. Nye released the gold dust, the seventeen thousand five hundred dollars worth of gold dust, and he said Asheim should have signed the note.

Q. What else did he say?

A. And McGinn got the gold dust.

Q. What did he say, if anything, in reference to the note being secured?

A. The note was secured by the gold dust, this seventeen thousand five hundred dollars in gold dust.

Q. What did he say in relation to de Journel and Nye?

A. Well, that de Journel didn't protect me.

MR. KANE: This all goes in over our objection that it is incompetent, irrelevant and immaterial, and leading and suggestive.

THE COURT: Yes. Proceed.

MR. KANE: Note an exception.

THE COURT: Exception allowed.

Q. What did he say with reference to de Journel and Nye having charge of the seventeen thousand five hundred dollar suit? (St. pp. 50-51.)

Mr. de Journel had charge of the suit for specific performance of the contract. He made reference to Mr. Nye; Nye was de Journel's agent. He told me the money in the bank to my credit was for the settlement of the damage suit, which he said had been settled for $62,500. He did not tell me at that time or at any time prior to the trial of the case in the Superior Court that he had released the gold dust or signed away my interest.

(The original assignment and deed is admitted in evidence, marked plaintiff's exhibit "D," and the signature thereto admitted by Mr. Kane to be that of Mr. Roden.)

MR. GRIFFIN: I desire to call the attention of the jury to the fact that this instrument has never been recorded.

MR. KANE: Hasn't it?

MR. GRIFFIN: The certified copy I got was not recorded.

MR. KANE: You may withdraw that statement. It was recorded.

THE COURT: What is the date?

MR. KANE: February 17, 1910. It was recorded two days after. How could you get a certified copy unless it was recorded?

MR. GRIFFIN: I got a certified copy, in answer to your question, from the clerk of the Superior Court after this was introduced in evidence. The certified copy does not show that it was recorded.

MR. KANE: That is the clerk's fault. That instrument was recorded. That is not our fault."

(St. 53-54.)

The parties named in this assignment and deed which was just read are the parties with whom I was litigating all this time on some of the ground, viz: E. C. Barnett, J. L. McGinn, M. L. Sullivan, J. C.

Ridenour, and N. L. Cook; those were the parties on part of the litigation. Mr. Roden made this assignment in my absence with the parties with whom I had been litigating. I talked with Mr. Roden as to whether or not I had a good defense to the Superior Court of King County; he told me I had a good defense. He said he would not be responsible for the money, and that Nye released the gold dust; and that he had the gold dust for collection.

Q. Who had it for collection?

A. Mr. de Journel, and he had Mr. Nye as his agent.

Q. Did you believe the statement Mr. Roden made to you?

MR. KANE: We object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled. Exception allowed.

(St. p. 55-56.)

I made my defense to that suit because of the statement made by counsel to me.

Q. What expense were you put to in that suit for attorney's fees?

MR. KANE: We object to that as incompetent, irrelevant and immaterial. It does not constitute a cause of action against the defendant in this case, and I object to any evidence being introduced on this cause of action.

MR. GRIFFIN: The court passed upon that at the time of the demurrer.

MR. KANE: I must differ with counsel. The opinion of the court shows—

MR. GRIFFIN: The opinion of the court overruled the second amended complaint because the second cause of action—

BY MR. NEWCOMB: I presented that myself and your Honor will recall it.

THE COURT: There was not anything said

about the materiality of this testimony or expenses that were incurred.

MR. GRIFFIN: Here are the facts: (Argument continued.)

THE COURT: I think I will let this question be answered.

MR. KANE: I will ask for an exception.

THE COURT: Exception allowed.

Q. What expenses were you put to in that suit for attorney's fees?

A. Approximately a thousand dollars.

A. We have the receipts.

MR. KANE: Do I understand that these attorney's fees and expenses were in the suit in the Superior Court that you defended for him in the case of de Jorunel against himself?

MR. GRIFFIN: Yes, I assisted him.

MR. KANE: I think the proper way, if this evidence is admissible at all, would be to show what would be a reasonable attorney's fees, but not what he paid for it, and for that reason I object to this form of testimony.

THE COURT: The objection is sustained. Exception allowed.

(St. pp. 56-57.)

I paid approximately a thousand dollars costs in that suit.

MR. KANE: We object to that and move to strike the answer because he is including attorney's fees.

Q. The cost of the suit, and clerk fees, do you remember?

A. I don't remember. You have the receipt.

Q. Is that the receipt?

A. Yes.

Q. The receipt for the money you paid to the clerk?

A. Yes, $9,341.00.

MR. GRIFFIN: You admit, do you, Mr. Kane,

that in that suit you were not entitled to interest in that note?

MR. KANE: I admit we got judgment in the suit, and the judgment was paid.

MR. GRIFFIN: That was the amount paid?

MR. KANE: I don't know what amount was paid. It was paid upon the judgment. That was a suit upon a promissory note. He is trying to prove what his expenses were in the suit of de Journel vs. himself. That was a suit upon a promissory note made by Mr. Dettering to Mr. de Journel.

THE COURT: If so, what the reasonable expenses were that he was placed to by reason of the statements of the defendant which led him to adopt the erroneous defense growing out of the matter which is alleged in this complaint.

MR. GRIFFIN: I think I have the receipt of the clerk for the money paid in.

MR. KANE: That is in payment of the judgment. I admit the judgment is paid.

THE COURT: Is that the judgment on the note?

MR. KANE: Yes, your Honor.

THE COURT: The objection will have to be sustained to that. That I assume cancels the note.

MR. KANE: Certinly, your Honor. I understand all this testimony has been stricken under my objection.

THE COURT: Yes.

(St. 57-58.)

I heard Mr. Kane's statement to the jury that his client and Mr. Havery paid into the Washington-Alaska Bank for my benefit sixty-five hundred dollars in one item; the $4,554.50 is another item. When I went to the bank after my return from Seattle, I found there approximately $11,054.50, the total of those two items which Mr. Kane stated had been paid in. I did not draw any checks or draw out any of that money which was paid in by Mr. Roden and Mr. Havery before I found the $9,500 or a little over. When Mr. Roden was going to give me $500 in Iditarod he said

it was attorney's fees for de Journel, and said that de Journel hadn't lived up to his agreement and was not entitled to it, and I told him de Journel was not entitled to attorney's fees and I would hold him for the money; that I would bring suit for the $17,500, and Mr. Kane, I can prove to the satisfaction of the court and jury that I was thrown out of court bodily and Mr. Roden got the money. I did not draw out any money from the Washington-Alaska Bank which had been put there by Mr. Roden and Mr. Havery, aside from the $9,500 that I afterwards found there; there was not as much as $11,054 to my credit when I returned there. There was nothing in the records of the Washington-Alaska Bank to show where the $17,500 in gold dust had been disposed of; I was unable to obtain any information as to how it had been disposed of.

CROSS-EXAMINATION, by MR. KANE:

No. 7 was about sixteen miles from Fairbanks, out beyond No. 5. I remember the time when Mr. de Journel saw me when he came by my cabin and asked me to come in and make an assignment of my interest in the $17,500 in gold dust to Asheim for collection. I did not at that time because I was out on the creek and I had to walk in and out. Sometimes the railroad ran only part of the time. The railroad ran within one hundred yards of my house, but only one train a day; if the train was there I took it, and when it wasn't I walked. I didn't have to walk as I testified yesterday. When the assignment was taken from Mr. Klonos to Mr. Asheim the title was in my name.

Q. Isn't it a fact that the title was put in the name of Asheim?

A. It was in the assignment that de Journel got me to make for the collection of the money during my absence.

Q. When you bought Klonos' interest out?

A. That was just the money, the seventeen thousand five hundred dollars to be put in the Washington-Alaska Bank. These people owned the ground and I owned the gold dust.

Q. We agree upon that, but I am asking when that was done, the assignment was made from Klonas to Sam Asheim for you and Asheim?

A. Well, there was an assignment at first but it was transferred to me during the panic. I raised the money and borrowed it from the New York Life Insurance Company. I paid Klonos fifty-five hundred dollars.

Q. Isn't it a fact that Mr. Asheim bought the original option from Mr. Klonos, and afterwards took you in on the matter?

A. He did it in trust, that is all.

Q. He did it in trust and the title was in his name.

A. It was transferred to me.

(St. 63.)

I had a talk with Mr. de Journel about instituting this suit against Manson for the recovery of the $17,500. Mr. de Journel was going to get an order from the Court and put it to my credit in the Bank. There would be no trouble whatsoever in getting the $17,500. I was in de Journel's house with Asheim when they were preparing this Complaint in August, 1909, for Asheim to bring suit against Manson to get the $17,500. I don't remember Nye being there at that time; I don't remember what the Complaint stated; but Asheim and I agreed that it stated what we thought the facts to be at that time; that suit was prepared at my request and Asheim's request at that time. I do not remember the day of the month. I never went to court after that on this suit that was started by Mr. de Journel; I believe Mr. de Journel appeared once, but we didn't have any trial on it.

Q. And did you consult with your attorney about how it was going along? If it was simply to go into

court and get an order, didn't you think it was strange that you didn't get this seventeen thousand five hundred dollars in gold dust from the 17th of August until the following spring some time?

A. Well, there is lots of times there is not court there and you could not get an order.

Q. But there was a court there in August, 1909, because you had other litigation there at the same time, didn't you?

A. Well, there was a number of other suits.

(St. 66.)

I did inquire why I didn't get the $17,500 in gold dust; I asked Mr. Jennings, of whom I asked legal advice occasionally. In 1909, from the 17th day of August, after this Complaint was filed, up to the time of the settlement of all the claims, I asked Mr. Jennings and quite a number of attorneys; I talked about it you know; we talked about it to a number of people. I asked my attorneys, Mr. Nye and Mr. de Journel, if it only required an order of court, and they always had some excuse; they told me the whole property was in litigation and that was their excuse why the money could not be turned over. Mr. Roden was attorney for me on three or four matters in the summer of 1909 and in the fall of 1909, and along until 1910, and in these damage suits involving Lower No. 2 and Upper No. 2 and he was attorney for me and for Harry Havery and Cascaden, Gianakas, and all the other people fighting Barnett and the Cook crowd. I had nothing to do with No. 5. I did not ask Roden to prepare a suit to recover the $17,500—that was de Journel, he had that No. 5. I didn't ask Mr. Roden to do any part of the litigation growing out of No. 5. Myself and my crowd were fighting Barnett and Cook and their crowd. Mr. Roden was with me and Mr. de Journel and the boys that were fighting the use of the ground by dummy locators, that is right.

I took a flying trip out here, and Mr. Roden suggested that I make a power of attorney; he said, "Don't

go away without leaving a power of attorney for some one to act for you." It was necessary for some one to have a power of attorney, even though I was only making a flying trip out, as that is natural for something happens I would blame myself. I thought I would take extraordinary precautions because everything was won. We had won all our cases slick and clean. I expected him just to protect me with the power of attorney. He was to account for all money that he signed away and all property sold, just like an honorable man should. Before I started out and before I gave Mr. Roden this power of attorney, Mr. Roden and our crowd had been negotiating with Barnett and his attorneys to settle the litigation. I left there about the 10th of February—something like that; I heard they started negotiations the day I left. It is not a fact that I had been talking with Harry Havery and Mr. Roden and Mr. Cascaden and all those men for over six weeks about a settlement of these cases; I surely would not have come out if it was a fact that the settlement was about to be made for about a week or two weeks previous to when I left. There was no negotiating whatsoever about a settlement for about six weeks before I left, and my people were not negotiating for a settlement with Barnett and his crowd on this Dome Creek litigation and there had been no talk about it when I left.

Q. Now, just answer the question. Now, there having been no talk over any settlement, why did you think it would be necessary that certain documents or deeds would have to be signed in your absence so that you would have to give a power of attorney to some one?

A. A man naturally gives a power of attorney so his business is protected.

Q. Did you ever, while in Alaska before, give Mr. Roden a power of attorney?

A. Well, in this case you know, I simply had to have somebody to look after my business.

(St. pp. 73-74.)

I never gave Mr. Roden my power of attorney before; he had been my attorney for a good while. When I went back there I stayed at the Golden Gate, I had a room there; I lived with Albert Arndt a little while in the fall.

Q. Isn't it a fact that you told Albert Arndt in Fairbanks after this settlement was made, that this settlement was saisfactory to you in every way, but that Sam Asheim should have paid half of the de Journel note?

A. I never said I got a settlement that was satisfactory. It was one of the rottenest I ever saw. The worst I ever saw.

(St. p. 75.)

It is not a fact that I told Arndt that spring that we all hoped they would get some money out of the settlement, but that I was well satisfied with everything, but that Asheim should have been obliged to pay half of the note out of the half of the gold dust that was in the Bank. I never said that there, and I never made any such statement at Iditarod. When I went back Mr. Havery told me about the damage suit and Roden told me he settled the damage suit, but he never told me about the gold dust.

Q. Didn't Mr. Roden tell you the gold dust had to be settled with all the other claims that were in litigation, that the settlements were compelled to be bunched together.

A. Yes, but that the seventeen thousand five hundred dollars went to me.

(St. 76-77.)

Mr. Roden didn't tell me anything about the settlement of the $17,500; he said Nye released it and they flim flammed me.

Q. Did he tell you why he deposited to your account sixty-five hundred dollars in one check, and forty-five dollars in another?

A. That was supposed to come out of the damage suit.

Q. Did you ask Mr. Roden why he deposited the two checks in that way?

A. No, I didn't ask him.

Q. Did he tell you anything about why he deposited them in that way?

A. No, he didn't.

Q. Did he tell you anything about it?

A. No.

(St. p. 77.)

We examined the records and could not find whether the case was dismissed or not. This is a copy of the papers in the suit by Asheim against Manson for the $17,500.

MR. KANE: This is a certified copy and I offer it in evidence.

MR. GRIFFIN: We object to it as immaterial, and it is certainly not proper at this time for him to go into his side of the case while our witness is on the stand.

THE COURT: Proceed. I will read it over.

(St. p. 78.)

Pretty near everybody said it was the rottenest settlement you ever heard of or saw, and I talked to Mr. Arndt about it, both at Iditarod in the spring of 1910 and in Fairbanks after I got back; I talked to a number of men, including David Cascaden; he didn't think it was a good settlement.

I went to Iditarod in 1910, and Havery and Roden went down too; there were a number of fellows on the boat, and I talked to them about the settlement; it was generally discussed that this Dome Creek litigation had all been settled at that time. Mr. Roden and I had a quarrel about it—about the settlement—about the damage suit, and I was not satisfied at that time. I went to the Bank to find out where the gold dust had gone to; I had a talk with George Wesch; he didn't

know. The Bank had no receipt and no information as to whom they had turned over the $17,500.

Q. They simply opened the doors and let some one come in and take it away?

A. Well, that is what they done with the depositors' money. They have no record of the depositors' money, $1,028,000 stolen, poor men's money, they are a bunch of thieves that ought to be behind prison bars.

THE COURT: Proceed. Now, don't do that again. I don't want to call your attention to it again.

(St. p. 82.)

Wesch said that the sixty-five hundred dollars and the forty-five hundred dollars, deposited in the Bank to my credit, was deposited by Mr. Roden in the settlement of the damage suit, and he could not tell me where the $17,500 in gold dust had gone or who took it.

Mr. Roden didn't do any more business for me at all after this business here after the settlement of the suit; I just cut Roden out because I did not like his settlement of the damage suit, but I didn't know he had signed away my gold dust; I couldn't find out about the gold dust then, it was impossible. I didn't know that the suit that I started for the gold dust had been dismissed in court; Mr. Roden put it all on Nye; I didn't know it was dismissed immediately upon this settlement being made.

Q. You didn't know it was dismissed immediately upon this settlement being made?

A. No.

Q. Didn't you know the records in the Auditor's office there showed there was a deed, not only of your interest to "Lower Two" and "Upper Two," but also your interest in the gold dust?

A. No, "Lower Two" and "Upper Two," but not the gold dust.

Q. You knew it was of record as to "Lower Two" and "Upper Two?"

A. Yes, sir.

Q. But you didn't know it was of record as to the gold dust?

A. I didn't know it was of record. I would not be sure as to "Lower Two."

(St. p. 84.)

I had gone over the record personally with Mr. Jennings, as soon as I got to Fairbanks; I went right away with Mr. Jennings; I heard they had made a settlement and I asked right away what the terms were, and when I found that they had settled for less than $100,000 I was altogether dissatisfied, because we had a written agreement that we would not settle for less than $100,000. Mr. Jennings said he could not find anything of record about the $17,500 in gold dust; I went to the Clerk's office to find out whether this suit was dismissed, and he said: "No, I fail to find it, I cannot find anything here." I talked with Mr. Nye, my lawyer, as to whether he knew anything about the dismissal, but I could not get any satisfaction out of him, and nobody gave me any satisfaction out of it. I went after Roden several times.

Q. Now, this settlement was made, as the records show here, in the spring of 1910, prior to February 19th?

A. Yes, sir.

Q. Now, you never sued against Mr. Roden, and never started a suit against Mr. de Journel for this seventeen thousand five hundred dollars until last year in this court?

A. I didn't know it.

Q. And you claimed all this time, since 1910, to be the sole owner of that seventeen thousand five hundred dollars gold dust?

A. Yes, sir, I was.

(St. p. 86.)

It was some time in the spring of 1912 that Mr. de Journel brought suit against me in the Superior Court of King County for $9,000, and it was conclud-

ed last year, and shortly after that suit was concluded I brought this suit against Mr. Roden.

Q. Did you ever make a claim against Mr. de Journel for this seventeen thousand five hundred dollars before Mr. de Journel started the suit against you, that is on the note?

A. Well, I always thought Mr. de Journel got his note paid, and he had the money for collection and he had the gold dust for security.

(St. p. 87.)

I did not know that de Journel had not been paid in Alaska. The de Journel had been presented to me there for payment, but when the security is back of the note, that is not proof that a thing isn't paid. I knew he was making claim against me after this settlement was made, and I made a claim against him for the $17,500.

Q. Did you ever bring a suit, or write him a letter or make a claim personally for the seventeen thousand five hundred dollars?

A. I did.

Q. When did you make the claim?

A. We brought a counter-claim for the seventeen thousand five hundred dollars in the suit for the note.

Q. And that is the first time you ever brought it?

A. Yes, and I found out right in court that Mr. Roden had signed away——

(St. p. 88.)

RE-DIRECT EXAMINATION, by MR. GRIFFIN.

For a large portion of the time after the defendant signed away my gold dust Mr. de Journel was in San Francisco and in Paris, and Mr. Nye was only his agent representing him when he was out. After the assignment of the gold dust I was in Seattle, then in Fairbanks, and then I went to Iditarod for about eighteen months. The suit by de Journel was determined in 1913.

Charlie Schafer, Hilcher, Cascaden, and Gianakas did not think the settlement was a good one; the general talk around Fairbanks was that the settlement was not a good one. (Witness excused.)

M. T. BRIGHTMAN, a witness for the plaintiff, being sworn, testified as follows:

I am a lawyer, since 1903; I have been in the city of Seattle all the time. I was one of the attorneys for the defendant, William Dettering, in the suit brought in the Superior Court by one Fernand de Journel to recover on a note for ninety-one hundred and some odd dollars; I took part in the preparation of that suit for trial and in the conduct of the suit for the defendant.

Q. Do you know what would be a reasonable sum to charge as an attorney's fee for the work done for the defendant in that case?

MR. KANE: We object to that on the ground that it is incompetent, and immaterial, and it is not within the issues of this case, and on the further ground that the second cause of action alleged in the complaint, to which this refers, does not state any facts sufficient to constitute a cause of action against the defendant.

THE COURT: He may answer. Exception allowed.

A. Yes, I have an opinion as to what would be a reasonable fee.

Q. What in your opinion would be a reasonable fee?

MR. KANE: We make the same objection.

THE COURT: Objection overruled. Exception allowed.

A. I think one thousand dollars would be a reasonable fee.

(St. pp. 92-93.)

CROSS-EXAMINATION by MR. KANE:

That is not what you charged then? I do not know what the legal expenses of Mr. Dettering were

in that case for my office and Judge Griffin's; I know what mine were.

RE-DIRECT EXAMINATION by MR. GRIFFIN

Plaintiff's Exhibit "E," the assignment referred to, admitted in evidence; signature of Mr. Roden thereon admitted by Mr. Kane.

MR. GRIFFIN: We offer it in evidence. This is the assignment which disposes of the seventeen thousand five hundred dollars in gold dust specifically, which was introduced in the trial in the Superior Court.

MR. KANE: I have no objection to it, but I object to the statement of counsel that it refers to the assignment specifically.

THE COURT: Yes, it speaks for itself.

(St. 94.)

Exhibit E read to the jury.

Mr. Griffin then read to the jury certain interrogatories as follows:

"Int. No. 1: Is it not a fact that you were the attorney for the plaintiff in that certain suit in the District Court of the Territory of Alaska, Fourth Division numbered 1343, entitled Harry Havery, plaintiff, vs. Gus Peterson, E. T. Barnett, Henry Cook, J. C. Ridenour, John L. McGinn, and M. L. Sullivan, defendants:

Ans. to Int. No. 1: Yes.

Int. No. 2: Is it not a fact that the said Harry Havery referred to in the preceding interrogatory as such plaintiff in said suit referred to in the preceding interrogatory was trustee, and that such suit was brought in the interest of said Harry Havery, Sam Asheim, H. D. Cascaden, J. F. Hilcher, James Gianakas, and William Dettering?

Ans. to Int. No. 2: Yes. Said suit was brought for the benefit of the persons named, and one Charles Schiek.

Int. No. 3: Is it not a fact that the suit referred

to in the two preceding interrogatories was brought by the plaintiff Harry Havery in his own behalf, and on behalf of the other persons named in the next preceding interrogatory to recover damages for gold dust unlawfully mined and taken from placer mining claim, bench claim No. 2, right limit, below Discovery Dome Creek in Fairbanks Mining District, Alaska?

Ans. to Int. No. 3: Said suit was brought to recover damages for gold dust extracted from claim known as "Upper No. 2" below Discovery, on said Dome Creek.

Int. No. 4: Is it not a fact that in the fall or winter of 1909 that Harry Havery, Sam Asheim, H. D. Cascaden, J. F. Hilcher, James Gianakas and William Dettering authorized you in writing to settle said suit for the sum of One Hundred Thousand ($100,000) Dollars and for no less than the sum of One Hundred Thousand ($100,000) Dollars?

Ans. to Int. No. 4: No.

Int. No. 5: If you answer the preceding interrogatory in the affirmative, please attach to your answer to these interrogatories the original of such agreement or a true copy thereof."

MR. GRIFFIN: The answer to No. 5 is a string of dashes.

MR. RODEN: There is no such document so I could not attach it.

"Int. No. 6: Is it not a fact that you had no authority from William Dettering to settle said suit numbered 1343 referred to in the preceding interrogatory excepting the instrument referred to in the next preceding interrogatory?

Ans. to Int. No. 6: It is not a fact.

Int. No. 7: State what consideration was received by the parties interested in the settlement of said suit numbered 1343, referred to in the preceding interrogatories and what portion of the consideration of said settlement was paid by you, if at all, to the plaintiff, William Dettering?

Ans. to Int. No. 7: This suit was settled together with one other suit for a certain total consideration, the exact amount of which I cannot recall, but the books of the Washington-Alaska Bank show the total received, one-half of this total sum, as near as I recollect, was applied to the satisfaction of the suit referred to in this interrogatory.

Int. No. 8: What interest did William Dettering have in Bench Placer Mining Claim No. 2, on the right limit, below Discovery on Dome Creek, being the claim referred to in the preceding interrogatories at and before the time said suit was settled?

Ans. to Int. No. 8: I don't know.

Int. No. 9: Was William Dettering, the plaintiff, indebted to you in any sum on the 7th day of February, A. D. 1910?

Ans. to Int. No. 9: It is my opinion that he was.

Int. No. 10: Is it not a fact that on or about the 6th day of February, A. D. 1910, William Dettering, the plaintiff, informed you at your office at Fairbanks, Alaska, that the foreman who had charge of the mining then being done upon Bench Placer Mining Claim No. 2 right limit, below Discovery, on Dome Creek, estimated there was Sixty Thousand ($60,000) Dollars in gold dust then mined and in the dump upon said claim?

Ans. to Int. No. 10: I don't know.

Int. No. 11: Did you know that the plaintiff, William Dettering, owned any interest in the Seventeen Thousand Five Hundred ($17,500) Dollars in gold dust deposited in the Washington-Alaska Bank at Fairbanks, Alaska, at the time a suit was brought in the name of Sam Asheim, as plaintaiff, to recover the possession of said gold dust?

Ans. to Int. No. 11: I did.

Int. No. 12: Is it a fact that while the suit, referred to in the preceding interrogatory was pending in the United States District Court, of the Territory of Alaska, Third Division, said Sam Asheim made

a declaration of trust in which said Sam Asheim admitted that said suit was brought wholly or partially for the benefit of William Dettering, the plaintiff in this action?

Ans. to Int. No. 12: Said Asheim declared that Dettering was the owner of an one-half interest in the subject matter of this suit.

Int. No. 13: Is it not a fact that the declaration of trust, referred to in the preceding interrogatory was delivered by William Dettering, the plaintiff, to you at your office in Fairbanks, Alaska, upon the same day that William Dettering made to you a power of attorney?

Ans. to Int. No. 13: Said declaration was delivered to me.

Int. No. 14: If you answer either of the two last preceding interrogatories in the affirmative, please attach to your answers either the original of such declaration of trust or a true copy thereof.

Ans. to Int. No. 14: Said declaration is not now in my possession. It stated that Dettering was the owner of one-half of the gold dust for which said suit had been brought.

Int. No. 15: What directions and instructions were given you by the plaintiff, William Dettering, at the time he executed to you the power of attorney on the 7th day of February, A. D. 1910?

Ans. to Int. No. 15: No particular instructions or directions were given to me.

Int. No. 16: What amount was paid by you to the plaintiff, William Dettering, upon his return to Fairbanks, Alaska, from the State of Washington in the spring of 1910?

Ans. to Int. No. 16: I paid him nothing upon his return, as near as I can recollect. All amounts to which he was entitled were turned into his account immediately after settlement was made and when the funds were distributed to the respective parties. The

books of the Washington-Alaska Bank show when these sums were turned into his bank account.

Int. No. 17: What item makes up the difference between the amount received by you for Mr. Dettering from the settlement of that certain suit brought by Harry Havery et al, plaintiffs against Gus Peterson et al, defendants in the District Court of Alaska, Fourth Division, numbered 1343, and the amount you paid to William Dettering upon his return from the State of Washington to Fairbanks in the spring of 1910?

Ans. to Int. No. 17: This item is made up of two amounts—one being the amount received by Dettering as a party interested in a suit brought by Havery against Barnett, Cook, Ridenour, McGinn, Sullivan and Yarnell, and the second represents one-half of the proceeds of the gold dust.

Int. No. 18: Set forth in your answers to these interrogatories a true and accurate account between yourself and the plaintiff, William Dettering, giving an accurate account of all sums received by you in which the plaintiff, William Dettering, was interested and which belonged to him, and all sums paid out by you for him between the date of February 7th, 1910, and the date upon which you paid Mr. Dettering upon his return from the State of Washington to Alaska in the spring of 1910?

Ans. to Int. No. 18: There was no account kept.

Int. No. 19: In what suits pending in the District of Alaska in which the plaintiff, William Dettering, was interested in did you appear as attorney, and whom did you represent in each of said suits?

Ans. to Int. No. 19: One suit entitled "Havery vs. Peterson et al.;" one suit entitled "Havery vs. Yarnell et al;" one suit entitled "Cook vs. Havery et al;" and one suit brought by "Cook et al vs. Klonos et al." In the first two I represented the plaintiff, in the last two the defendants. The first two were for trespass on Upper and Lower No. 2 below Discovery on Dome

Creek; the third involved the title to Upper No. 2 below Discovery on Dome Creek; and the fourth involved the title to the ground from which the gold dust had been extracted.

Int. No. 20: Did you have authority to represent and did you represent, William Dettering in all matters at Fairbanks, Alaska, from the 7th day of February, 1910, until Mr. Dettering returned to Fairbanks, Alaska, in the spring of 1910?

Ans. to Int. No. 20: I represented Dettering in all law suits in which he was interested.

Int. No. 21: What directions, if any, were given to you by the plaintiff, William Dettering, authorizing you to settle, sign away and dispose of the seventeen thousand five hundred dollars in gold dust in the Washington-Alaska Bank, at Fairbanks, Alaska?

Ans. to Int. No. 21: No particular directions were given me.

Int. No. 22: How much cash, and what other consideration was paid to you in settlement of all suits settled by you in the winter of 1910, in which the plaintiff, William Dettering, was interested?

Ans. to Int. 22: A cash settlement was made to the satisfaction of all interested parties and this was immediately distributed among the several parties. The entire amount was placed in the Washington-Alaska Bank, and the books and records of said bank show what disposition was made of them, besides the total amount paid. There was no other consideration received either by me or any other person.

Int. No. 23: Is it not a fact that at the time Sam Asheim instituted a suit to enforce the specific performance of the contracts executed by John Klonos and assigned to Asheim and Dettering, that said Asheim made and executed an agreement or declaration of trust in which Sam Asheim claimed that William Dettering was the owner of one-half interest in the mining property involved in the suit, and also in the seventeen thousand five hundred dollars in gold

dust, which was deposited in the Washington-Alaska Bank?

Ans. to Int. No. 23: The only thing involved in this suit was the gold dust. Asheim made such a declaration, that is, that Dettering was the owner of an one-half interest in the subject matter of this suit?

Int. No. 24: What portion of the proceeds of the seventeen thousand five hundred dollars in gold dust ever came into your possession, and what was done with the same?

Ans. to Int. No. 24: No portion of said gold dust ever came into my possession. The proceeds thereof were placed in the Washington-Alaska Bank to the credit of Asheim and Dettering in equal shares. This transaction is evidenced by the books and records of the Washington-Alaska Bank, through which bank all money was received and disbursed."

MR. GRIFFIN: Have you the deposition of Mr. Wesch, Mr. Clerk?

MR. KANE: While Mr. Griffin is getting that I want to call your Honor's attention to the exhibit I offered in evidence as part of the cross examination.

THE COURT: I don't think it should be admitted.

MR. KANE: I will ask for an exception.

THE COURT: Exception allowed.

MR. KANE: We would like to publish all the depositions at this time.

THE CLERK: They have been published.

MR. GRIFFIN: You admit the total amount deposited in the Bank to the credit of Mr. Dettering, is the amount shown by Mr. Stewart's deposition?

MR. KANE: Whatever Mr. Stewart's deposition shows, I suppose will be correct.

MR. GRIFFIN: And that the balance in February was reduced to $9,551.00?

MR. KANE: Yes.

MR. GRIFFIN: Then it is admitted that the amount deposited in the Washington-Alaska Bank by

the defendant and Mr. Havery to the credit of the plaintiff, Mr. Dettering, was two amounts, one for sixty-five hundred and one for $4,554.50, and that the account, the balance of the account on the 9th of March was $9,509.50.

MR. KANE: Yes, and that the amount was afterwards taken out by Mr. Dettering. He so testified to that.

MR. GRIFFIN: The plaintiff will rest, unless there is something I have inadvertently omitted.

MR. KANE: I would like to address a motion to the Court and I think the jurors should be excused.

THE COURT: The jurors may be excused for a few moments, and will remain within call. (Jury retired.)

MR. KANE: At this time, on behalf of the defendant, I desire to interpose a motion challenging the sufficiency of the evidence introduced by the plaintiff to make out a cause of action on his first cause of action, and also I challenge the sufficiency of the complaint as not stating facts sufficient to constitute a cause of action; and those two motions I make also as to the second cause of action; and I further move to have the case dismissed at this time because it appears from the complaint itself, and from the evidence now in, that both causes of action, the first cause of action, and of course—that failing, the second cause of action will fall, are barred by the Statute of Limitations, of the Territory of Alaska, and that the plaintiff was guilty of laches if he ever had any cause of action against Mr. Roden.

It appears from the complaint that the action is barred, and the Statute is pleaded by Judge Griffin. The whole Statutes were set up in the pleadings.

(Argument followed.)

THE COURT: I think there is a difference between these two instruments here with relation to the matters to be transferred. These instruments were drawn up and acknowledged the same day before the

same notary public, and they have the same covers upon them, and they are written upon the same typewriting paper. Upon an issue we would have to determine they pertained to two different matters. One in a general sort of way refers to money on deposit. It doesn't refer to the gold dust, and the court could not find that gold dust is money, and that money is gold dust; they are not synonymous, and the other instrument makes specific mention of the certain option which they have here—

MR. KANE: They mention the Manson option in the first one.

THE COURT: They do in a general way. The other option is not in evidence so I cannot determine that this is it, and under the pleadings here the Statute of Limitations is not raised.

MR. NEWCOMB: I would like your Honor to hear from me a moment before you finally rule upon it.

THE COURT: Unless you have authority which bears directly upon it I don't care to hear further.

MR. NEWCOMB: He has pleaded the Statute of Alaska, and he has not proved the Statute of Alaska at this time, so that as far as this motion is concerned he has not proven his case.

THE COURT: You have not raised the Statute of Limitations by your pleadings. That is it. In the absence of any Statute of a foreign State the court would presume it was like our local Statute, so that there is not any presumption in the matter suggested, but as I said a moment ago, in analyzing these instruments, that it is not for the court to say that the gold dust was transferred under the first instrument, under the view that the other instrument was executed at the same time, that is, that it was transferred in a general way, and then in a specific manner, and under the matters before the court now, the court will have to deny the motion.

MR. NEWCOMB: If your Honor holds we cannot raise the question of the Statute of Limitations

because we did not demur to the second amended complaint—

THE COURT: You could raise it by answer.

MR. NEWCOMB: You can raise it by demurrer to the complaint as it now stands. Now, we did not demur. It is my understanding of the practice in this State that we do not have to demur to raise that question later by challenge to the introduction of any evidence, which was done at the opening of this trial, and also for a motion for dismissal as we are now making at the close of the plaintiff's case.

THE COURT: You are wrong. The State of Washington gives a number of grounds for demurrer. Those grounds can be taken advantage of or waived, and upon the question that the complaint does not state facts sufficient to constitute a cause of action, the question can be raised at any time, it can be raised by demurrer or by answer, so that a person cannot demur at any time during the course of a trial, but he can simply object on the ground that the complaint does not state facts sufficient to constitute a cause of action. But the other grounds of demurrer must be taken by demurrer or by specific pleading.

MR. KANE: At this time I ask of the court the privilege of amending my answer to raise the question of the Statute of Limitations. The Statutes are pleaded by the plaintiff and it is no surprise to counsel for plaintiff.

MR. GRIFFIN: We object to that very strenuously.

THE COURT: It may be allowed.

MR. GRIFFIN: We will ask for an exception.

THE COURT: Exception allowed.

MR. KANE: Then I will prepare the amendment and file it in the usual way. Now, does your Honor overrule my motion?

THE COURT: Yes, in view of the instruments. The court cannot say at this time that the plaintiff did have notice.

MR. KANE: We will ask for an exception.

THE COURT: Exception allowed.

(St. pp. 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107.)

FERNAND DE JOURNEL, a witness called on behalf of the defendant, being sworn, testified as follows:

I am an attorney-at-law. I practiced in Alaska, at Fairbanks, in the year 1909, and for some years previous thereto. I am acquainted with William Dettering. I was acquainted with Sam Asheim in his lifetime, having known both of these gentlemen at Fairbanks. My wife at one time held a note of William Dettering's; it was endorsed to me and I held it for her. At the time the note was given no security was given me by William Dettering, either for myself or for my wife. Mr. Dettering is mistaken when he says that certain gold dust in the Washington-Alaska Bank was given as security for that note; such gold dust was never put up as security for that note. The note was executed by Mr. Dettering to my wife on or about the 11th of August, 1909. Upon my getting the note it was not immediately put in the Washington-Alaska Bank; some time after I got it, I left it in the Bank for collection, and then I came outside. He gave me no other security for the note; there was no need of security if he paid it before I came out. I was coming out in September; the note was given in August. He was to realize something on his securities here if he failed to pay the note, and in the event he didn't do that he was to come out at the time I did, and give me a mortgage on a house he had here in Seattle that was furnished and that he was renting furnished, he told me; also some stock in the Scandinavian-American Bank, and other securities he told me he had. The other was the Alaska Building, but I am not so sure about that. He was to give me the stock in the Scandinavian-American Bank and also the mortgage or bill

of sale of his house, somewhere on 12th Avenue, I think it was.

I had a talk with Mr. Sam Asheim in Alaska. I am familiar with the ground known as the Dome Creek property, having had considerable litigation for parties in that. I remember claim No. 5. I remember the Klonos-Manson option; I was not attorney in that case—Mr. Coosby was. Sam Asheim is now dead; he lived in Fairbanks at that time; he was a mining partner of Mr. Dettering. I had a conversation with Mr. Asheim about his holding an interest in the Klonos-Manson option; this conversation, in which their relations were discussed, was held with Mr. Dettering and Mr. Asheim together. The first conversation was in 1908, and I should think, as far as I can recollect, it was when Mr. Asheim, Mr. Dettering and I were in Mr. Asheim's cigar store, when Mr. Asheim introduced Mr. Dettering to me as his partner in "No. 5," having bought No. 5 with him. I would not be positive that was the first time I met Mr. Dettering, but I know about that conversation because I thought it was a risky business. Down to the time that the suit was instituted by Asheim against Manson I had many conversations after that first one with Asheim and Dettering together in which the partnership in the interest in No. 5 was discussed; I had a conversation with Mr. Asheim as to his purchasing and paying for $17,500 gold dust that might be brought out of the Klonos-Manson option. That was before Dettering purchased. When Asheim purchased he purchased alone, and then he sold to Dettering.

Q. What conversation did you have when Asheim purchased it?

A. Klonos was indebted to Asheim for two thousand dollars money loaned and Asheim wanted to get square, and therefore he purchased "No. 5" for that business and then got Dettering to buy in with him. I suppose he gave him cash, as he explained to me. Asheim had no cash only he had advanced that to

Klonos, nd in order to get square on the proposition he entered into an agreement with Klonos to purchase No. 5 and then got Dettering to put up some money towards the purchase and complete the payment so to speak.

(St. pp. 114-115.)

The next time I talked with Asheim about his purchase Mr. Dettering was present. At that time Asheim told me, and some time—say two or three months afterwards, or maybe a month afterwards, he and Dettering told me of their coming purchase.

A. Well, as far as I can recollect Asheim told me, that, and some time, say two or three months after, or maybe a month after, he and Dettering told me of their coming purchase and perfecting the purchase of that claim for which Dettering as I recollect paid some three thousand or thirty-five hundred dollars, and Asheim had already a couple of thousand dollars in it, and that was the purchase price of their seventeen thousand five hundred dollar equities.

(St. p. 115.)

I knew the question involved in the title to No. 5, as I did all of One, Two, Three, and Four. They were all under the same contention; the whole of those individual claims had been re-located by the Dome Group Location; the title to No. 5 was exactly the same as the title to the others, except that there some complications about No. 5 that did not enter into the others; while we had possession of One, Two, Three, and Four, we did not have possession of No. 5. Manson was in possession of No. 5, and he was the agent of Captain Barnett, and there is a difference there. I remember in the summer of 1909 there was a suit prepared by Sam Asheim against Manson for this $17,500 gold dust. I did not tell Mr. Dettering that there was nothing to do to get this $17,500 but to go into court and get an order and take it out. The suit was prepared in my house in Fairbanks, Alaska; Mr. Dettering, Mr. Asheim, Mr. Nye, and myself were

present. The title to the option, the assignment from Klonos, stood in the name of Sam Asheim; it was in that name from the time the title left Klonos. This is the complaint in the case Asheim vs. Manson; it is the complaint prepared by me at that time in the interest of Mr. Dettering and Mr. Asheim.

MR. KANE: We offer this in evidence.

* * * * * * * * *

Mr. Nye was the attorney in that case for Mr. Asheim?

A. Yes, sir.

Q. Mr. Asheim and Mr. Dettering were with you in preparing this complaint, were their respective rights in this seventeen thousand five hundred dollars gold dust as to what the interest of one or the other had in it?

A. I thought the way the matter—

MR. GRIFFIN: We object to what he thought.

Q. What I mean is what interest did each of these men hold in it?

A. Half.

Q. Half each?

A. Yes.

(St. 117.)

They were there talking and preparing this complaint, and at that time there was no claim made by Dettering that Asheim owed him one-half of the $5,500 which he claimed was paid for the interest in this option. I never heard it claimed by him up there. I never advised Mr. Dettering that there would be no litigation on this matter of getting the $17,500. I put it in the hands of Mr. Nye because I was coming out and I knew it would be a hard fight; in this litigation involving the title to this property I represented Burke and Jantala on No. 1; on No. 3 I represented Stafford; on No. 4 I represented Nathan Zimmer and Prosser; these suits were commenced in 1905, and that property was in litigation from that time on until this settlement.

CROSS EXAMINATION by MR. GRIFFIN.

Q. This certified copy of the complaint which was shown to you, paragraph five reads as follows: "That since the 15th of October, all suits, actions, and adverse claims existing after said first day of September, 1906, against said undivided one-third interest in said claim, or any part thereof, had been settled and finally determined." Was that true?

A. Well, at that time it was more true than it is now, because that had been modified by the Circuit Court of Appeals in the two hundred Federal, page 700, I think. (St. 120.)

At the time this was drawn up everything in connection with it was not settled; there was a judgment of dismissal, a decree forming a judgment of dismissal, but that was dismissed without prejudice and they could bring a new suit if they wanted to; that is an allegation we often put in a complaint. We advised and worked on this complaint for Asheim and Havery every day for a month. We had a great deal of litigation; there were a great many assignments of the Twos and Five, and trespasses on the ground.

A certified copy of the complaint is received in evidence, marked defendant's exhibit "1."

I had something to do with the trespass suit, and when I was answering this question I thought counsel was referring to the litigation Dettering, Asheim, and Havery were in at the time; no this complaint is not taking a month alone.

Q. And at that time you alleged here that everything was settled and the money had to be paid over?

A. That is an allegation we put in the complaint.

Q. You would not bring that suit and allege that everything was settled if it was not true?

A. I will answer that if the court will allow me to explain. These suits had to be brought to a head. We had five years' litigation on those, and owing to the fact that the judgment of dismissal by the court below,

the court in Alaska, was a judgment without prejudice, we knew we would have to go all over it again, and I advised that the sooner it would begin the sooner it would be ended, and therefore to enter it at once, otherwise it might not be settled now, but I thought that would be brought to a focus, and we would either get a settlement or a judgment that would wind it up, and that is my reason for alleging this.

(St. 122.)

That was my contention at the time; our only purpose in bringing the suit was not to get the attorney's fees of $1,000. I did not ask for the suit—they brought it to me. I had a case against Mr. Dettering in the United States Court, and have a suit pending against him now. I am the same de Journel who was urging Mr. Roden to bring a suit upon that note in Alaska. I tried to collect my money a long time.

Q. And you are the same de Journel referred to when he says that I have always declined to do so, saying that "I have always declined to do so, because Mr. Dettering's statement would be taken in preference to his"?

A. Maybe so, at that time it might, but not now.

Q. And that is up in Alaska where you and Dettering were known?

A. That is where I defended him for assault with attempt to murder.

(St. 123.)

Right after the trial in Judge Tallman's court I had a conversation with Mr. and Mrs. Dettering. I did not tell them in that conversation that Roden had beaten them out of $40,000. I did not tell Mrs. Dettering that I had to bring suit against her husband for this note, and that I hesitated to bring suit against her husband for this note; neither did I tell her that I always thought he had drawn out the $17,500 gold dust deposited in the Washington-Alaska Bank at Fairbanks. I knew the gold dust was not there to se-

cure the note, and I knew that he hadn't drawn it out either.

On RE-DIRECT EXAMINATION by MR. KANE, the same witness testified:

If the gold dust had been there as security for the note I would have drawn it out before I went outside and got my fee before I went. (Witness excused.)

JOHN L. McGINN, a witness for the defendant, being sworn, testified as follows:

I am a lawyer, and since 1900 I have practiced in the Territory of Alaska. I know a good deal about the property we have been talking about here, and I had a number of cases involving the title to it. I know Mr. Roden and Mr. Dettering. We were all connected with the cases started by Harry Havery as trustee for certain people for "Lower No. 2" and "Upper No. 2" on Dome Creek. I was attorney for the defendants in those actions. The suit was brought against Peterson and Peterson had a lease on Lower No. 2 and was working on that lease; I represented them in the action; they were there as our lessees and I was interested in the ground. That first suit involving the title to the Dome Creek Group Association was brought on the 20th of April, 1905; I think the notice of relocation was recorded on the 17th of April, 1905, and shortly after, after the perfecting of the location by the filing of the notice of location I brought suit on behalf of the Dome Creek location against the people claiming adversely. That suit affected No. 1, No. 2, No. 3, No. 4, and No. 5 in the middle (indicating on the map), the other I think represents the Creek claims; the Dome group was a mile in length here, 160 acres, and we staked 1320 feet wide; it came down here and took in No. 5.

I was familiar with the option agreement that was executed by John Klonos to Manson on No. 5.

(Certified copy of option agreement offered in

evidence, marked defendant's exhibit "2," and entered without objection.)

The final case in this litigation was decided about May, 1912, by the Circuit Court of Appeals. We tried the case before Judge Gunderson, in 1907; the suits began in 1905, including the suits started by Mr. Havery on "Lower No. 2" and "Upper No. 2"; we finally settled in 1910, with the exception of the Roney case; there were two or three settlements, the last settlement in February, 1910, with Havery and Roden and their associates; we were negotiating a month or two when this litigation was finally settled; the claims of Harry Havery and his associates were all turned over to us in 1910.

Plaintiff's exhibit "B" is the settlement we entered into whereby they transferred all their right, and what adverse interest they claimed in the Dome Creek Association to us. It was rcorded on the 19th of February, 1910, and afterwards returned to my office.

Q. How many Manson agreements, or options, were there affecting the title to the property or moneys that were affected by the settlement of this litigation? * * *

A. There was only one Mark Manson, and that is the option he obtained from John Klonos.

Q. On what property?

A. On No. 5, and which was in fact held by the people I represented there. Manson took the option for the benefit of my people.

(St. pp. 130-131.)

This is the option that affected the $17,500 in gold dust; there was no other option or agreement of any kind involved in the settlement that involved the name of Manson.

Referring to plaintiff's exhibit "D," that instrument contains a description of all the property that was affected by this settlement; plaintiff's exhibit "E" is an agreement made at the same time; these papers were all drawn by me; plaintiff's exhibit "D" took

in the Twos, for which I got separate deeds; then I had that general agreement, which included everything. I did not want to go to the expense of recording those others, viz: plaintiff's exhibit "E" and we got an assignment of the gold dust and a deed for this particular piece of property, and then a deed for the Twos and the Coosby Fraction and all the property included here. I did that as a matter of precaution; so I have a number of separate deeds covering the other properties, which are not recorded. I had these papers in my possession up to the time of the de Journel suit, when I sent them to you at your request. I know the amount that was paid in the settlement of this litigation that is involved in the property described by plaintiff's exhibit "D". I made the settlement, and I paid out the money myself. The total amount paid out was $49,500.00, and we took the gold dust—it was covered in that assignment. I gave two checks to Mr. Havery and Mr. Roden jointly; one check was for $36,500, and the other was for $13,000; we settled for the gold dust on the basis of $13,000; we settled the damage suit for $36,500 (for "Upper Two" and "Lower Two").

I heard Mr. Dettering's testimony that the title to No. 5 was clear, at least as to the gold dust; all that was necessary was to go to court and get it; the facts as to the title to that gold dust are: we had the title—at least we thought we had, and we had the title to the ground; it was in litigation, but he had no chance for it. I am familiar with the litigation and was all through it; there was no time up to the making of the settlement that the title to No. 5 was clear; there was no time up to the settlement that the money could be paid out under the Klonos option agreement which provided that it could not be paid out until the title was clear; one part of the litigation could not be settled without the other; I refused to settle unless the whole thing was cleaned up—that is the Twos and the whole thing; we had already settled One, Three, and Four, but I said at that time,—"We will clean up the

whole business or I won't talk to you," and finally we got to terms and cleaned up the whole litigation.

On CROSS EXAMINATION by MR. GRIFFIN, the witness further testified:

In 1905, at the time this property was located and the Dome Creek Association formed, there had never been a shovel put into the ground, and it was because it was vacant that it was taken; I was employed as attorney on the case after the ground was located, by Barnett, Ridenour, and Henry Cook; the claims were located in the name of J. C. Ridenour, in the name of Henry Cook, and those absent people who were not residents in Alaska; we used powers of attorney that Barnett had at that time, and they were included. The Circuit Court of Appeals sustained our location finally.

I represented the people. Mr. Dettering came into the litigation. I was going to settle the litigation with Mr. Miller for thirty thousand dollars, and then Dettering butted into the litigation by offering Miller thirty-five thousand dollars; he didn't own an interest in the claim; he claimed an interest, but we claimed he didn't own them. Klonos had no title. I know Klonos had no option on the ground; I can show you his deposition where he swore he never put a shovel into the ground. My people did not take the gold dust out of the ground while an injunction was pending. Mr. Dettering was not present when the settlement was made; he had been there a little while before. I took up the negotiations with Mr. Roden or Mr. Nye. It was some time ago and I do not remember all the details. The consideration paid was $49,500.00 and I got the gold dust. Mr. Dettering never prospected the ground. I was told that there was some money spent by Harry Havery in putting down a shaft; Mr. Dettering did not put up the money for it. I represented the Fairbanks Banking Company; I was not an officer at that time; I also represented the other bank.

About September, 1909, the Fairbanks Banking Company bought the Washington-Alaska Bank for $250,000. I do not know anything about whether the bank made any record of the disposal of this gold dust.

In RE-DIRECT EXAMINATION, by MR. KANE, the witness further testified:

There was never at any time any attempt made to cover up what was paid in settlement of this case; everybody knew what the terms of the settlement were, in a little community like that everybody knew all about it. I have no feeling of any kind against Mr. Dettering; there were no suits started by me against Mr. Dettering; he bought into the litigation; I had a chance to settle it all and he bought into it.

JOHN C. RIDENOUR, a witness on behalf of the defendant, being sworn, testified:

I am a resident of Seattle, and I formerly lived in Fairbanks, Alaska. I am the same Ridenour who with others, including Cook, located on some of this land. I remember the time the settlement was made by myself and associates and Harry Havery and his associates. The property involved in that settlement was Upper Two, No. 3, second tier, No. 4, second tier, and No. 5, second tier, and the so-called Fraction. Forty-nine thousand five hundred dollars was the total amount paid to Harry Havery and his associates in settlement of that litigation. I was quite familiar with the condition of the title to No. 5 at that time. I heard Mr. Dettering's statement when he said there was no litigation about the property; there was litigation about it; that, with other properties, were similarly affected; all that we settled was in litigation, and also there was a case pending on the third tier separate from this, with another party at that time. At that time we would not make a settlement on a part of it without settling all of it.

On CROSS EXAMINATION by MR. GRIFFIN, the witness testified:

I heard Mr. McGinn say that Manson represented our interest in buying that one-third interest of Klonos. I don't know what the agreement was; the other person interested in that No. 5 was Mr. Klonos as to the one-third interest.

(Witness excused.)

The deposition of SIDNEY STEWART, a witness for the defendant, was then read; it was as follows:

I am an accountant of Fairbanks, Alaska. I have under my control the books and records of the Washington-Alaska Bank used during the years 1909 and 1910, in which are the accounts of its depositors.

On February 21st, 1910, an account was started by Havery and Roden with this Bank; that account shows that $36,500 was deposited to the credit of Henry Roden on February 21, 1910, and a check for $2,750 and one for $1,000 were charged against the account; on Feb. 24th the following checks: $4554.50, $4554.50, $8,000.00, $9342.00, $4200.00, $300.00 and $1100.00, making a total of $32,051.00 charged against the account, leaving then a balance to their credit of $699.00, all the checks being drawn against the deposit of $36,500.00.

No other transactions took place until March 9, 1910, when a deposit of $3390.00 was made, and on the same day, two checks of $233.00 each were charged to the account. On September 15, 1910, a check for $1520.00, and one for $420.00 were charged against the account. On September 29, 1910, a check for $833.00 was charged against the account, which was the balance of the account then to their credit, which closed the account. Since then there has been no further transaction in the account. As to whom these payments were made it is impossible to say for the reason that the pass book has been written up and the can-

celled vouchers have been returned to Havery and Roden as indicated by the check marks on the account.

The ledger shows that William Dettering had an account with the Bank on the 21st of February, 1910; on this date $6500.00 was deposited to his account, and on the 24th of February, 1910, $4554.50 was deposited to Dettering's account. There were no other items deposited to his account; those two deposits are the only two deposits in his account. There was an account of William Dettering prior to February 24th, 1910, but the same had been closed on February 9th, 1910. On March 9th, 1910, there was a balance to his credit of $9509.50, which balance remained until April 8th, 1910, when the account was charged with $9022.50.

A. The Washington-Alaska Bank kept a record of escrow deposits which were carried by number, the details of which were expressed on the face of the envelope containing the escrow. Under number 139 of the escrow records, M. E. Manson placed seventeen thousand five hundred dollars payable to John Klonos. The maturity of that escrow was upon the determination of title. The escrow envelope is as follows: "139. Escrow. Escrow deed. The within deed of conveyance from John Klonos as grantor, to M. E. Manson, grantee, is delivered in escrow with the Washington-Alaska Bank at Fairbanks, Alaska, upon the understanding and agreement that the same shall be delivered to M. E. Manson or his agent upon the payment of the sum of seventeen thousand five hundred dollars into the said bank to the credit of said John Klonos, on or before the settlement or final determination of all suits, actions, and adverse claims against an undivded one-third interest of said John Klonos in claim No. 5 below, first tier, right limit, Dome Creek, and No. 5 below, second tier, right limit, Dome Creek, according to the terms of an optional agreement made between said parties upon this date, otherwise the same shall be returned to said John Klonos, his heirs

or assigns, to be cancelled and destroyed. Dated the first of December, 1906, signed John Klonos, M. E. Manson. February 19, 1910. Received the within document, M. E. Manson, Sam Asheim, Successors to John Klonos.

(The said deposition was duly signed, "Sidney Stewart.")

(St. pp. 143, 144, 145, 146.)

CROSS INTERROGATORIES.

A. In a book I have here in which was listed the liability of the different parties to the Washington-Alaska Bank, and under which is noted securities, etc., to these loans, if any was given at all, I find no record of eight thousand dollars made by William Dettering and Sam. Asheim. In their loan and discount register, which is a book recording all loans made by the Washington-Alaska Bank, under the date of Nov. 10, 1908, a loan No. 2505, of eight thousand dollars, was made to William Dettering and Asheim. The record shows the note was for sixty days, discounted on Nov. 12, due Jan. 9, and paid Aug. 11, no year being given. There is nothing further in this discount register showing that there was a security for this eight thousand dollar note, and I know of no other book showing loans and securities for loans other than these books just presented.

* * * * * * * * *

A. In the Collection Register of the Washington-Alaska Bank in September, 1909, note No. 917, made by William Dettering left for collection for account of J. de Journel, for nine thousand one hundred and forty-one dollars and thirty-five cents. The note was dated August 10, for three months, payable November 10, the year not being given. On January 13, 1911, a memorandum states the same was returned to Nye. There is no record in this book nor in the collateral security book of the Bank, or any other record of the

Bank that I know of or can find showing that the seventeen thousand five hundred dollars left in escrow by Manson was to secure the nine thousand dollar note or the eight thousand dollar note.

* * * * * * * * *

A. The escrow ledger shows no record of how it was disposed of, and there is no original record of the bank showing how the seventeen thousand five hundred dollars escrow money was disposed of.

(St. pp. 147, 148, 149.)

(Signed "Sidney Stewart.")

The Court then adjourned until 10 o'clock, Thursday morning, March 25th, 1915.

Leave was then granted to the defendant to file an Amended Answer, and it was stipulated between the plaintiff and defendant that the reply may be considered filed denying the Answer.

The deposition of M. E. MANSON, witness on behalf of the defendant, was then read in evidence, as follows:

My residence is Fairbanks, Alaska; my business, speculator. On the 6th day of December, 1906, I entered into an option agreement with John Klonos, under the terms of which I was to purchase the interest of John Klonos in the mining claim known as No. 5 on Dome Creek in the Fairbanks District, Alaska.

(A certified copy of that option agreement was attached to the deposition, marked "Exhibit A.")

I assigned my interest in that option to Cook and Ridenour, but I don't know the exact date of it. John Klonos assigned his interest in the option, I believe, to Sam Asheim, but the date I cannot tell you. The gold dust, amounting to $17,500, mentioned in the option, was deposited by me in the Washington-Alaska Bank, at Fairbanks, Alaska, at various times as taken out of the ground; it was not deposited under any other conditions than those mentioned in the option agreement. I have not the original escrow agreement

delivered to the Bank in this matter or a true copy thereof. I have no knowledge of the fact that the gold dust was held as security for the payment of the promissory note of any person whomsoever. The gold dust was turned over to Henry Cook, the exact date I do not know. Klonos had assigned his interest to Sam Asheim, and Sam went with me to the bank and directed them to turn it over to Henry Cook and it was turned over to Henry Cook. I do not know anything about the suits that were pending on the 21st of February, 1910, involving the mining property from which this dust was taken. There were some suits pending, but I could not state what they were. I have no interest of any kind in the subject matter of this action. I do not know anything about whether William Dettering paid the entire consideration paid for the assignment by John Klonos to William Dettering and Sam Asheim. I cannot say as to whether Sam Asheim paid any portion of the consideration for the transfer and assignment of Klonos' interest in and to the option covering the gold dust heretofore mentioned; it is a fact that the $17,500 in gold dust deposited by me in the Washington-Alaska Bank to the credit of John Klonos had nothing whatever to do with the mining claim and fraction known as Placer Claim No. 2 below Discovery on the right limit of Dome Creek or the Coosby Fraction adjoining said claim. The $17,500 in gold dust deposited by me in the Washington-Alaska Bank was not in any way involved in the litigation of either of the suits brought by Harry Havery against Barnett, Ridenour, Henry Cook, McGinn, Sullivan and Peterson, and the suit brought by Harry Havery against Barnett, Ridenour, McGinn, Henry Cook, Sullivan, and Yarnell.

(St. 150, 151, 152, 153, 154.)

(This deposition was signed "M. E. Manson," and after being read was admitted in evidence without objection.)

The deposition of GEORGE P. WESCH, a witness for the defendant, was then read, as follows:

I am a prospector on Poor Man Creek, Alaska. I have known Henry Roden and William Dettering since 1906 or 1907; during the years 1909 and 1910, I held the position of cashier in the Washington-Alaska Bank, at Fairbanks, Alaska; during the months of January, February, and March, 1910, I was cashier.

On or about the 20th of February, 1910, the Washington-Alaska Bank had gold dust in its possession amounting to $17,500 under an escrow agreement made between M. E. Manson and John Klonos, which escrow agreement specified the terms and conditions under which the gold was to be held and to whom it was to be delivered. That agreement was between M. E. Manson and John Klonos, and the gold dust was to be turned over to either Klonos or Manson; it was not to be turned over to Manson alone. Both the agreement and the gold dust were withdrawn from the Bank by M. E. Manson and Sam Asheim, as successors to Klonos. On or about the 21st of February, 1910, $6,500 was placed in the bank to the credit of Asheim and Dettering. I cannot recall whether it was placed there by the direction of Asheim or by Asheim and Roden both. There was a tag bearing the name of Manson and Klonos on the poke of dust, but further than that there is nothing that I recall, showing the conditions under which the Bank held the same. There was nothing to indicate that this gold dust was being held as security for any indebtedness to de Journel. There was nothing to indicate that in the event this gold dust should be turned over to Asheim and Dettering or either of them that a certain promissory note for $9141.00, dated August 10th, 1910, made by William Dettering in favor of de Journel should be paid out of the said gold dust or the money paid for it. There was nothing to show, and I had no knowledge that this gold dust was being held as security for any indebtedness of any person whomsoever. There was

nothing in the records of the Bank to show that it was held for any pledge or security.

I have known Harry Havery since 1904. On or about the 21st day of February, 1910, there was $32,750 placed to the credit of Havery and Roden; I cannot say by whom the deposit was made. This money was checked out and disposed of as follows:

A. February 21st, 1910, check $2750.00. February 21st, 1910, check $1000.00. February 24th, 1910, check $4554.50. The bank ledger shows credit to Asheim. February 24th, 1910, check $4554.50 and bank ledger shows credit to Dettering. February 24th, 1910, check $8000.00, bank ledger shows credit to Havery. February 24th, check $9342.00, bank ledger shows credit to Kaskaden. February 24th, 1910, check $4200.00. February 24th, 1910, check $300.00. March 9th, 1910, check $233.00. March 19th, 1910, check $850.00. September 13th, 1910, check $1520.00 September 13th, 1910, check $420.00. September 29th, 1910, check $833.00. I cannot give the names of the payees.

I know all of these transactions, being present at the time they occurred, and I refreshed my memory during July, 1914, by examining the books of the Bank. I presented the note to Roden about February 24th, 1910, for payment—the note made by William Dettering to de Journel. I do not know that any special mention was made of the account or the gold dust or anything else. Roden replied that he would have to see Dettering about it on his return from the outside. At that time I did not have any information, nor had the Bank, to my knowledge any information that anyone else was liable on that note. I presented the note to Dettering about April 1st, 1910; Dettering said that he would have to see about it, and then informed me that Asheim was liable for one-half the amount. Mr. Dettering did not at that time complain or say anything to me of the way Henry Roden had handled the affairs with the said gold dust. During the summer of 1912 he expressed himself as dissatisfied with the way af-

fairs had been handled. At the time I presented the note to Dettering he had a balance of $1154.50 on deposit in the Bank. It was checked out by Dettering. In April, 1910, Dettering informed me that Asheim should pay one-half the note, and made no complaint about the settlement at that time. I first learned that William Dettering claimed that Asheim was liable for one-half of the note about the first of April, 1910. I am in no way interested in the outcome of this suit. I will not be in Seattle, or within a hundred miles thereof, at the time of the trial of the above entitled cause, which is set for December 18th, 1914.

CROSS INTERROGATORIES.

It is a fact that the escrow agreement between John Klonos and M. E. Manson, referred to in Interrogatory No. 6 was assigned; it is also a fact that it was assigned to Sam. Asheim and to William Dettering. I have neither the original nor a copy of said escrow agreement and assignment in my possession. The $17,500 in gold dust in the Washington-Alaska Bank at Fairbanks was never at any time, to my knowledge, held to secure the note made by Sam. Asheim and William Dettering to the Washington-Alaska Bnak. The note made by Sam Asheim and William Dettering to the Washington-Alaska Bank was taken up by de Journel; some time afterwards a note for $9141.35 was left by de Journel for collection; the gold dust was held in escrow at all times under the original escrow agreement. The note made to the Bank was taken up by de Journel and a new note left by de Journel; and the gold dust remained in the Washington-Alaska Bank. The officers of the Bank were as follows:

E. T. Barnett, President.
L. L. James, Vice President.
G. B. Wesch, Cashier.

Each was also a director and stockholder. R. C.

Wood and W. H. Parsons were also directors and stockholders. The Fairbanks Banking Company was the principal stockholder. It practically owned all the stock, the others just held enough to qualify them as directors.

I represented David Cascaden in the settlement that was made at Fairbanks, Alaska, in the suit wherein Henry Cook and E. T. Barnett, John C. Ridenour, John L. McGinn, and M. L. Sullivan were defendants, and David Cascaden, William Dettering, J. Gianakas, Samuel Asheim, and Hilcher were plaintiffs, which suit was brought by the plaintiffs to recover from the defendants gold dust which the plaintiffs claimed had been wrongfully mined by the defendants from certain mines or certain mining claim or claims situated in the Dome Creek in the Fairbanks District, Alaska. I know of no agreement made in the office of Henry Roden and signed by David Cascaden, William Dettering, J. Gianakas, Samuel Asheim, and Hilcher in which it was agreed that the plaintiffs would not settle their claims against Cook *et al.* for gold dust mined from the claims mentioned, for less than one hundred thousand dollars, and in which it was agreed that Henry Roden was to be paid an attorney's fee of $3,000 in said suit. I have no knowledge of the terms of any such agreement. I believe it is a fact that William Dettering paid all the money and all the consideration for the assignment of the agreement made between John Klonos and M. E. Manson, and borrowed money from the Washington-Alaska Bank to pay for such assignment.

I did say to Dettering in the Post Office at Iditarod, Alaska, about the 20th day of July, 1913: "I know all the bills and expenses were paid by you. You got used bad. Your attorneys did not protect you." While I believe all the bills and expenses were paid by him, I do not know it to be a fact. I think I did say to William Dettering aboard the S. S. Mariposa, in the presence of his wife, and to Arthur E.

Griffin in his law office in Seattle, Washington, in 1912 or 1913: "I have no knowledge of what became of the seventeen thousand five hundred dollars in gold dust or its proceeds." That was in reference to Manson and Asheim after it was delivered to them. I remember a conversation being held in the office of Mr. Griffin in the fall of 1912, but I cannot recall having made the statement that the $175,000 in gold dust was held as security for $8,000 made by William Dettering and Samuel Asheim, payable to the Washington-Alaska Bank, or that any card or tag was attached showing that said gold dust was held as security for any such note. I am sure I did not make such a statement or statements. I knew at that time that the last note to de Journel was signed by Dettering alone, and I did not say that I did not know. I did say that de Journel took up the first note, but I did not say that the gold dust remained to secure the note; the dust remained, but it remained pending the determination of the title. (St. 154-165.)

(This deposition was signed by "George Wesch," and the testimony therein contained was offered in evidence and admitted without objection.)

Mr. Kane then read to the jury defendant's exhibit "2," and the power of attorney made by Dettering to Henry Roden.

JOHN C. RIDENOUR, a witness on behalf of the defendant, was then recalled, and on direct examination testified as follows:

I was in Fairbanks at the time the settlement was made between Harry Havery and his associates and myself and my associates; the date of that settlement was about the middle of February, 1910. Negotiations pertaining to that settlement were taken up between the different sides along about the holidays, 1909. The different sides had meetings at which their representatives were present; I cannot tell how frequent these meetings were; the settlement was talked of about the holidays, and then there was a little over

two weeks I was out, and then from that time I stayed in town, because negotiations were pending from that time on; that is from two weeks after the holidays. I know what became of the gold dust; it was taken from the Washington-Alaska Bank and taken over to the Fairbanks Banking Company and melted up and divided. Myself and Cook and his associates got the $17,500. It was included in the settlement and we paid those people. M. E. Manson and myself, and I believe Paul Hopkins of the Fairbanks Banking Company, received the dust and took it over to the Fairbanks Banking Company and put it in on deposit.

On CROSS EXAMINATION by MR. GRIFFIN, the witness testified further:

Asheim was not there; Manson and myself got the gold dust; Asheim may have been in the Bank, I do not know as to that. The persons who got the dust were the same ones that Mr. Dettering had been litigating all this time with. Wesch was cashier of the Washington-Alaska Bank; I don't know whether Barnett was president of the Washington-Alaska Bank or not. Mr. Wesch would know. Asheim did not go over with us to get the gold dust.

RE-DIRECT EXAMINATION BY MR. KANE.

When I speak of the dust and what became of it when we took it out of the Bank I say that those men and myself took it to the other bank. Asheim didn't help. Barnett was somewhere in the States when the settlement was made and had been out for some time.

(St. pp. 166-169.)

ALBERT ARNDT, a witness for the defendant, being first duly sworn, testified as follows:

I live on the Yakima Indian Reservation, three miles this side of Toppenish. I lived in Fairbanks, Alaska, fourteen years; I was in Fairbanks during

1909 and 1910. I know William Dettering and Henry Roden; I also knew Sam Asheim; I knew them at Fairbanks during the years mentioned; in the winter of 1909 and the spring of 1910 I lived in the town of Fairbanks itself—in the town proper. Mr. Dettering and myself lived in a cabin; it was turned over to me by Mr. Roden. I was familiar with the litigation pending upon the Dome Creek Association claim. I lived on Dome Creek for several years and had property in the neighborhood.

I remember the time the settlement was made between Henry Havery and Barnett on the other side. During that time and previous to that time Mr. Dettering and I were living and sleeping together. I remember when Mr. Dettering came out in February; before he came out and before the settlement I talked with him about the settlement off and on; in talking with him it seemed that the law suit had been going on for years, but it seemed it came near the settlement and he expected a settlement most any time; the other parties in the law suit, Gianakas and Asheim, they all said the same—that they were going to settle the law suit, settle with the other parties. Dettering got impatient and had to go outside, and before he went outside he said he would turn everything over to Roden; if anything came up for settlement he would turn it over to Roden. We talked together about the settlement in a general way a good many times; we slept in the same bed, and the same thing, the same subject, about this settlement, used to come up a good many times; I do not know exactly how long the settlement was pending or how long Mr. Dettering was talking to me about it before he went outside, but they used to come to Roden's office at night time, and I wasn't interested in it so I went out of the office when they met there. Asheim and Charlie Shiek and Gianakas and Dettering and all of those interested in the suit on that one side met there in Roden's office. I could not say exactly how many times I saw them

meet, but I saw them quite a few times. After these meetings Dettering and I would go home; we slept together; he didn't say much about what was going on, only that they could not come to an agreement and could not settle with the Cook and Ridenour and Barnett party. Dettering told me before he left he was going to turn his business over to Roden; he was getting impatient; he had some business out here about a house and could not wait any longer and he said "Roden can settle this just as good as I can." I heard them speaking the day before he left about a power of attorney, either Dettering asked Roden about it, or Roden asked him to come in and sign it. We had been to dinner together that night.

Q. What was said about giving the power of attorney, if anything?

A. What was said about it?

Q. Why was it given?

A. To act for him in his place in case this thing came to a head.

(St. 173.)

I was in Fairbanks when the settlement was made and after. After Dettering came back from the outside he stopped in the cabin with me and we slept together; he talked to me about the settlement, after he came back—when he first came back he was awfully excited because Sam Asheim got away without paying one-half of the $8,000 note in the Washington-Alaska Bank; and he said Asheim owed one-half of the note and ought to pay it and he could not see how the gold was removed without Asheim paying one-half out of that; he said the money for the note ought to have been taken out of the gold dust before it left the bank; the gold ought never to have left the bank. He talked to me about where the gold was gone; he said it had gone to the Cook, Ridenour party. He objected to the settlement because Roden ought to have had half of that note paid out of Sam Asheim's share. He told me that a thousand times; he was excited because

Asheim got away without paying his share of that note. I know the relations that existed between Asheim and Dettering; they were in partnership in this law suit; they got this litigation from John Klonos and they were in partnership. Mr. Dettering in his conversations with me never claimed that Asheim owed any other money except that Asheim should have paid one-half of the note at the Washington-Alaska Bank. He claimed that the note was signed by Asheim and he should pay one-half of it. He spoke to me many times about it—about being willing to pay one-half of the note himself; he always admitted he would pay one-half but would not pay all, and that Asheim should pay the other half.

On CROSS EXAMINATION by MR. GRIFFIN, the witness further testified as follows:

I guess he did think that Asheim had signed the note.

Q. You know that was his understanding and he told you many times that it was secured by the gold dust?

A. Yes, sir.

Q. That the $9141.00 note was secured by the gold dust?

A. He always called it the eight thousand dollar note to me.

Q. The first note was eight thousand dollars?

A. I didn't know about two notes until I came in here.

Q. You know he always claimed to you even at the time he came back that that note was a secured note and the gold dust was in the Washington-Alaska Bank to secure it?

A. Yes, we talked it a good many times.

Q. And he always insisted that the gold dust was there to secure the payment of the note?

A. That is what he said. (St. p. 176.)

When I speak of Mr. Asheim being in partnership I mean they owned an interest in No. 2.

Q. Yes, each of them owned separate interest in it?

A. Not according to John Klonos. I know when Klonos first sold his interest I was intimately acquainted him him, and he was a great fellow to grab a little money from everybody. He used to go to Asheim and get money for a long time." (St. p. 177.)

According to our mining law they were partners, but not in the sense that Dettering and I would be partners if we slept in the same cabin.

Q. Asheim had a cigar stand and Mr. Dettering had business up the creek and they held their business separately?

A. In the business in the cigar?

Q. And the interest up the creek?

A. No, sir, not that way. (St. p. 177.)

I never saw an agreement in writing in which they were partners; I didn't know that Dettering paid all the money for the interest in the $17,500.

Q. Did you ever read over the agreement that was made between the owners that they would settle this claim, authorizing Roden to settle for one hundred thousand dollars and no less?

A. I never have. (St. p. 178.)

I never heard them talk about it until I came into this court; I was not interested directly in the suit at all; I was interested on Dome Creek; my interest was close by Klonos' property. When Dettering came back to Alaska he was excited about the $17,500 being taken away without the note being paid. He said that Asheim's share should be turned over. He did not tell me to go to the Bank to find out about the gold dust. I was out to Dettering's house in Seattle after the de Journel suit was tried and before this suit was brought. I didn't say at that time that I knew of this $100,000 agreement whereby it was agreed among the owners that they would settle with the contestants or

claimants for less than $100,000, because I never did know of such an agreement. I never made any such statement, because I never heard of that agreement until yesterday. I learned lots here yesterday that I didn't know.

Q. You know that the settlement referred to by Mr. Dettering when he was there in Fairbanks referred to the contentions that these people were thrashing out in court and that they were about to get their rights?

A. They were about to settle up.

Q. That all of the litigation was finally decided in their favor and that they were to have their money?

A. Yes, sir. (St. p. 179.)

On RE-DIRECT EXAMINATION by MR. KANE, the witness further testified as follows:

Q. Now Mr. Griffin asked you if you understood that the litigation had all been decided in their favor and that they were going to get their money; was that the reason or was it because they were getting together to settle?

* * * * * * * * *

A. They were getting together to settle up and make the best of the bargain. (St. p. 180.)

Q. Did Mr. Dettering ever tell you after he came back in there that he didn't know where the seventeen thousand five hundred dollars had gone?

* * * * * * * * *

Q. Did he ever tell you he didn't know where the seventeen thousand five hundred dollars had gone to?

A. No.

Q. Did he tell you where it had gone to?

A. Yes, he knew it was turned over in the settlement. (St. p. 181.)

I have heard Mr. Dettering and Mr. Asheim declare that they were mining partners. Dettering said that they, or that he and Asheim held Klonos' interest jointly.

On RE-CROSS EXAMINATION by MR. GRIFFIN the witness further testified:

Mr. Roden has not my power of attorney now; he had my power of attorney a long time ago and settled some business for me.

Q. Did Mr. Dettering ever tell you he was anxious to settle for anything he could get out of it?

A. He was anxious to get through with it.

Q. He was anxious to get his title settled and get the property?

A. The property had been worked out. (St. p. 182.)

RE-RE-DIRECT EXAMINATION by MR. KANE:

Q. Judge Griffin asked you if Mr. Roden wasn't your attorney?

A. No.

Q. As a matter of fact who is your attorney?

A. Judge Griffin is, what matters I have. (St. p. 183.)

HARRY HAVERY, a witness for the defendant, being sworn, testified as follows:

I live in San Diego, California. I lived in Alaska a little over thirteen years; I went there in December, 1897, and left there in September, 1910, for the first time. I am the same Harry Havery who brought suit for myself and for certain parties as trustee for their interests on Upper and Lower No. 2 on Dome Creek, including also the Coosby Fraction. I am acquainted with Mr. Dettering and Mr. Roden, and was also acquainted with Mr. Sam Asheim. I was the original locator on "Upper No. 2"; lower No. 2 was located by one Gilbert McIntyre; I also located the Coosby Fraction. Mr. Dettering did not locate either of the Fives. I was familiar with the title to the Fives. As to the litigation pertaining to the Fives, we were all served with papers in April, 1905, and it continued in

litigation until I settled the last settlement in February, 1910. As to Upper and Lower No. 2, the parties represented were Asheim and Dettering, Gianakas, Hilcher, David Cascaden—there was quite a few of us. I had given a half interest in No. 2 and it was divided up, and sometimes I can't think back as to who were the owners. Previous to February 17th, 1910, we had been negotiating from the previous September; there had been talk of a settlement from September continually until we settled, but it came to a focus after the Christmas holidays; that was when we all got together and agreed to take a certain sum—each one would take a certain sum for his interest in the property. We had numerous meetings in Roden's office previous to a settlement, at which Dettering, Asheim were both present as well as Gianakas, and sometimes Asheim alone and Cascaden. I can't state the number of meetings we had where Dettering was present; we were continually having meetings as one will when a thing of that kind comes up; we would make an agreement one day, to get a certain sum and then find out the next day that we couldn't get it, and the next day meet and agree upon a certain sum that each one would take, and it continued that way for several days. Mr. Dettering was not present when the actual settlement was made; he was out of the country when that was made.

In the total settlement of these claims, on the claim No. 5 we received two checks, one for $36,500 and the remainder, $13,000, I think it was, making up $49,500 all told for the Twos and No. 5. The $13,000 was checked off to Asheim and Dettering; we did not check it out, but it was checked by Asheim and Dettering—that is by Roden. We deposited for Asheim and Dettering's account that amount; the balance was checked out in the interest of the Twos and the Coosby Fraction; I have the vouchers that paid out the $36,-500. (Witness is handed several checks.) This is the check to Gianakas, accepted by him for his interest.

This is a check to J. F. Hilcher, for $1,000 for his interest in "Upper Two." This check for $4554 was for Sam Asheim for his interest in "Upper Two" and in the Coosby Fraction. This check to William Dettering is the same as that paid to Asheim, their interests being the same and is in payment in the damage suit in Number Two, being $4554.50; that had nothing to do with the Fives. This check to Harry Havery for $8,000 represented my interest—one-half of the entire amount of the damage suit; this check to Cascaden $9342 is for his interest in the Fraction and in Upper Two and Lower Two, and this also covers expenses which Cascaden had paid out for prospecting and for costs of the suit. Mr. Cascaden paid the expenses of this suit, handling the property on Upper and Lower Two. He paid this money to me personally, all the money to carry on the work. None of this expense was paid by Mr. Dettering; all the disbursements on this property were paid by me as I had charge of the work there, and nobody but Cascaden disbursed money for this purpose; when it came to the payment of the legal fees they were paid by Cascaden and Dettering and Asheim, between them, but all the work done on the property were paid as above stated.

This check made to Henry Roden is for the Charles Schick amount; he had a lay on the property, and he had signed his interest to Roden to pay to some creditors, so Schick's amount was included in Roden's fee; Mr. Roden's share in this check was $1100 and the balance of $3100 was for Charles Schick.

Sam Asheim was interested in this property; he had abandoned his lay two years before, but when it came to the settlement we recognized his interest to that extent. This check to R. M. Crawford is for Hilcher and for Crawford who was Hilcher's agent; $300.00 of this check is for Crawford. This $1100 is attorney's fees to Mr. Nye, and this for $1520 was paid to Tom West as de Journel's attorney's fee. This check of $420 for Mr. Nye represents the balance

claimed for attorney's fees for himself and de Journel making the attorney's fee paid to each Nye, de Journel, and Roden $1520.

Q. Was the sum that Mr. Dettering and Sam Asheim got as full and fair a settlement as to them, as the money that you and the others got for the proportion you had for your interests in the property?

MR. GRIFFIN: We object to that. The only way to show that is to show the interest in the claims. They haven't shown what Mr. Asheim and Mr. Dettering had in the claim at the time.

MR. KANE: I can show that if there is objection made.

THE COURT: The objection is overruled.

MR. GRIFFIN: Will your Honor allow me to show what interest Mr. Dettering had in the meantime?

THE COURT: You have already done that.

MR. GRIFFIN: You haven't permitted us to show that.

THE COURT: I permitted Mr. Dettering to testify to his interest.

MR. GRIFFIN: I offered a deed to show Mr. Dettering's interest in the property.

THE COURT: I had reference to the gold dust.

MR. GRIFFIN: Yes, as to the gold dust. But he was testifying as to the interest in the Bench Claim No. Two and not an interest in the gold dust.

THE COURT: I don't care to go into that. The objection will be sustained.

MR. KANE: We will ask an exception.

THE COURT: The exception is allowed. (St. p. 195.)

There was only one agreement which we ever signed up or agreed upon, and I never heard until yesterday of any agreement whereby we should settle for $100,000, for if it would have been so I would have been very glad because—

THE COURT: Never mind about that. Just answer the question.

I never knew of any agreement to settle for $100,000. There was no agreement to settle for any particular sum whatever. Finally the sum was agreed upon about one day before the settlement. Mr. Dettering never contended before me or before any meeting that he would not settle for less than $100,000.

I am familiar with the title to the Fives; I lived there on the line of Four and Five for a year and a half with the owners.

Q. Now, when this law suit was settled, could you people have settled the damage suit and left the other out without settling them?

A. Mr. McGinn and the remainder of that party said they would not settle—

THE COURT: Answer the question; could it be done?

A. No, sir.

Q. Then, in order to settle any of those pieces of litigation, what was necessary to be done with the others?

A. They had to be all settled or none at all.

Q. Did the other people who were interested in this litigation here with you, agree to the settlement that was made on the 19th of February, 1910? (St. p. 197.)

Mr. Asheim was present when this settlement was made, and agreed to the settlement made on the gold dust.

(The witness was handed plaintiff's exhibit "D" and asked to examine the signatures.)

The signatures are all right; it contains the signatures of all the parties, either by themselves or by someone as their attorney in fact, that were interested in the litigation. It contains all of them with one exception—and that was Schick, who was interested in the lay. Sam Asheim's was made by himself. I was acquainted with Manson who held an interest in

No. 5 below under the option agreement. I knew that Cook and Ridenour claimed an interest in that property here and that was the great contention at the time on the title. If there had been any of $100,000, or if it had ever been talked about, I would have certainly have known of it. I held the title to all these claims for those people. In receiving this cash settlement we got the best settlement we could, because at that time they had commenced another action and it looked as if the case would go on for the next five or six years; it had been going on for seven years and we got the best settlement out of the conditions that could be got.

Q. What is the fact, Mr. Havery, as to the attitude that the different representatives, such as Gianakas and the others took, in making this settlement?

MR. GRIFFIN: We object to this as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

MR. KANE: If the court would let me go into that, you would see the importance of it. I will ask for an exception.

THE COURT: Exception is allowed. (St. 199-200.)

(Proceedings resumed after recess.)

I have heard of the Klonos-Manson option that affected the property known as No. 5. The gold dust down there was likewise settled in the settlement of this suit.

Q. Now, was there any other option in this entire settlement or in the settlement in which you people were interested on Dome Creek, was there any option or agreement in the name of Manson affecting those properties?

* * * * * * * * *

A. No, I don't know of any other option. (St. p. 201.)

I know of no other agreement that was there in the name of Manson.

These checks which we spoke of before totaled $49,000. $36,500 for the damage suit, and $13,000 for the gold dust on No. 5. The checks I testified to this morning had reference to the damage suit; that was $36,500, less $699.00; the explanation of that last item is:

There was a note in the bank which was against me for $700, a note which I had endorsed for a partner of Mr. Schick, that was working on Number Two. He had borrowed this money from the bank and they had to have an endorsement, so Klonos and myself had endorsed this note, and this sum was against the amount and against Klonos and I, and on settlement they demanded payment of the note, and the note had to be paid, and I had $8,000 coming out of the general funds.

I saw Mr. Dettering after he came into Fairbanks, it might have been a day or two after he came in in the spring. We settled in February, and I think he arrived in April. We talked over incidents pertaining to the settlement, and I told him about the settlement and asked him what he thought about it. He said he thought it was all right as far as the Twos were concerned, but he did not like the way Asheim had treated him on the gold dust; he said Asheim hadn't treated him right on that.

Q. Did he state to you anything about where the gold dust had gone, that he had knowledge of where the gold dust had gone?

A. Well, he knew that someone had taken it.

* * * * * * * * *

He said that someone had turned it over to the McGinn outfit. (St. p. 203.)

After that I was located about eight miles from Fairbanks, and was in and out of Fairbanks about once a week. I left there in September of that same year, 1910. Mr. Dettering could during all that time, and since I came out here have had full information, and could have seen the cancelled checks if he had asked me

for them; he never asked me for them; I had the checks during all that time.

Q. Another thing, around in the city of Fairbanks, state whether or not it was commonly known that this litigation was settled and how it was settled?

* * * * * * * * *

A. Fairbanks is a small district, and anything of that kind going on, everyone talks of it, and it was common knowledge that the case was settled. (St. p. 204.)

It was in the newspapers at the time it was settled. In a general way I knew of the option from Klonos to Asheim and Dettering; I knew about the relationship that existed between Sam Asheim and Dettering; I got my information as to the relationship between the parties from Asheim. It was shortly after Asheim bought the Fives from Klonos, he told me—

Q. What did Asheim tell about the partnership existing between Asheim and Dettering?

MR. GRIFFIN: We object to this as incompetent, irrelevant, and immaterial.

THE COURT: Unless the plaintiff knew about it of course. Sustained.

MR. KANE: We will ask an exception.

THE COURT: Exception is allowed.

* * * * * * * * *

A. Mr. Dettering was present at the time we were considering the negotiations with Asheim.

* * * * * * * * *

Q. Was there any relationship at that time discussed in any way?

A. We looked upon them as partners.

MR. GRIFFIN: We object to this.

THE COURT: The objection is sustained.

Q. How would you refer to each other? How would they refer one to the other in company of that kind?

MR. GRIFFIN: We object to this—

THE COURT: He may state what they said.

Q. What they said and what did to each other, as to business dealings?

A. They carried on ordinarily as partners do.

MR. GRIFFIN: We move that this be stricken.

THE COURT: Yes, it may be stricken. (St. p. 206.)

On CROSS EXAMINATION by MR. GRIFFIN, the witness further testified as follows:

Mr. Dettering did not buy his entire interest in No. 2 from Klonos. Dettering got back to Fairbanks some time in April, 1910. He said that the $6500 which was received from the proceeds of the gold dust, and the $4554.50 which was received as the proceeds of the damage suit, amounting to $11,054.50, had been drawn out except $9500 in the bank. I don't know what was in the Bank, I know what was put in.

Q. What checks have you got there to show that?

A. Here is an amount against William Dettering of $1270 drawn out by the three parties, which was put in the bank to cover the suit which I wished to explain this morning.

Q. And this was drawn out by Mr. Roden?

A. Yes, sir.

Q. And not by Mr. Dettering?

A. No. (St. 209-210.)

The total amount which Mr. Dettering received from the gold dust and also from the settlement of the damage suit would be the amount drawn out by Mr. Roden for attorney's fees; I know that Mr. Dettering did not pay the expenses or finance that suit. I do not know what portion he paid; he might have paid some minor portion, but a very small one because I handled the money from Cascaden.

Q. Don't you know that Cascaden simply paid his portion and that the remaining portion was paid by Mr. Dettering?

A. No, Mr. Cascaden and I were together most

all the time. Cascaden informed me he put up the entire amount. (St. p. 210.)

Mr. Wesch was Cashier of the Washington-Alaska Bank. Mr. Dettering did not sign the note for $699 that I spoke of that was taken out. Mr. Dettering was given credit in the money paid into the Bank; as to financing the suit, he did not finance that. I received $8,000 and Cascaden received $9342. There was an agreement made between these owners some eight months before the settlement, or possibly a year, I am not positive as to the exact time it was made; it was made between myself and all of the owners when they deeded that interest to me in trust.

RE-DIRECT EXAMINATION.

MR. KANE: What agreement was entered into? You said an agreement was entered into eight months before that.

MR. GRIFFIN: We object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

MR. KANE: There is a contention that there was an agreement for $100,000 settlement and I want to clear that matter up and I will be very short on it.

Q. Was there any agreement at any time as to the amount this thing should be settled for?

A. None whatever.

Q. This agreement that was made was the trustee agreement between you and the others?

A. Yes, sir. (St. pp. 212-213.)

HENRY RODEN, the defendant, called as a witness in his own behalf, being sworn, testified as follows:

I am the defendant in this case. I arrived in Alaska in February, 1908. I went in through Canadian territory; in 1910 I went into the Iditarod country and have been there practically ever since. In the early days I was miner, prospector, and day laborer. Now

I am admitted to the bar. I was admitted at Fairbanks. I have known William Dettering since the beginning of 1907. I represented him in litigation involving Upper and Lower No. Two on Dome Creek. I was his attorney in the suit that was referred to here to recover $17,500 gold dust. Mr. Nye was the attorney of record in that suit. This map represents the Dome Group Association. I was intimately familiar in the year 1908, 1909, and 1910 with the condition of the title to those claims and particularly with reference to the title of the Fives. The final settlement of this case was made on the 19th of February, 1910. I represented Mr. Havery, Mr. Dettering, Sam Asheim, Mr. Hilcher, Gianakas, and Charlie Schick, and Cascaden; all the people who finally signed releases upon the property. Negotiations for the settlement of these claims started, practically speaking, shortly or immediately after the complaint was filed. They were negotiating for settlement, before the settlemnt was made February 19th, 1910, from around about the holidays 1909, and the negotiations seemed to be heading from that time.

I had many talks with Mr. Dettering previous to the settlement; some in my office and sometimes in my house where he was stopping. There were daily meetings held of all of the people or a number of the people interested in the litigation. We discussed in those meetings what propositions we should offer the other side, and how we would divide the proceeds of the litigation among the different parties.

Between the first of January, 1910, and the 19th of February, 1910, when the settlement was actually made, I would testify that there was not a day that there was not a meeting, and sometimes two and three in one day, because there was a constant intercourse between my clients on the one hand and Mr. McGinn's clients on the other hand. They were talking among themselves very often, trying to bring the thing a little

closer, while the attorneys, Mr. McGinn and myself, could never get together. (St. p. 217.)

Havery and his associates and McGinn and his associates would discuss it, especially Gianakas; he was one of my clients, and he would come two or three trips in a day or half a day and have his interview with Ridenour or some of the others, and come back and report to me; he was constantly working for a settlement because he was anxious to get out, as he did when the settlement was made; he didn't stay twenty-four hours. There were many negotiations previous to the time Mr. Dettering left, and the deal was practically closed when he did leave and he had not reached Seattle I guess, unless he made the trip in much less time than is ordinarily made, when the negotiations were closed and the settlement made. The settlement was made on the 17th and the documents were delivered on the 19th.

Referring to the conversation which Mr. Dettering and I had that lead up to the execution and delivery of the power of attorney, Mr. Dettering and myself were very close to each other; I was not only his attorney, but I was his close friend, and that is why he lived in my house. During all the trouble he had up there in the criminal case I was his chief counsel and defended him, and during those days we became very intimate. He seemed to have more confidence in me—

He told me a few days before he left. He insisted upon me taking his power of attorney which I didn't care for, but he insisted upon my taking his power of attorney so that I could represent him fully in anything that transpired, and particularly that I might have control over Mr. Nye in the lawsuit which was then pending involving the $17,500, and that lawsuit I had declined to take, to become one of the attorneys of record, because I could see no chance at that time where they could win that suit.

Q. Was any talk had between you and Mr. Det-

tering as to how this case should be settled and his rights taken care of both as to the gold dust and the other?

MR. GRIFFIN: We object to that as suggestive and leading.

A. He told me to deposit his funds and his money, if received, to his credit in the Washington-Alaska Bank.

Q. Was there any statement made by him to you as to what his case should be settled for?

A. No, sir.

(St. p. 219.)

There was no such agreement; he placed no limitation whatever upon the amount I should settle these cases for; he told me to use my best judgment, the same as the other clients did, and do the best I could for all of them. I certainly did use my best judgment. The $17,500 interest was sold for $13,000. As to the condition of the title to that ground and the title to this gold dust, the title to these two Fives was in the most precarious condition of any of them. We could never have established a title because we could never prove a discovery was made on the two Fives. While we could prove a discovery had been made on the Ones, the Twos, the Threes and the Fours. Half of the $13,000 that was received in settlement of the $17,500 gold dust was supposed to go to the credit of Mr. Dettering and half to the credit of Sam Asheim. Asheim was present when the settlement was made, and agreed to it. The total amount received in settlement of all this litigation was $49,500. The gold dust was turned over to Ridenour and Cook and their associates. I helped Mr. Havery on the distribution of the funds on the damages.

THE COURT: I don't care to go into the matter of the distribution of the money.

(St. p. 221.)

There was never any agreement signed by all the parties or it was never stated to me, and no one

ever informed me of any agreement not to settle for less than $100,000. I wish there had been. Such an agreement was never discussed or talked of any time by anyone at the meetings we had. I heard of it for the first time when this law suit came up. Mr. Barnett was not in the country at the time the settlemen was made, and he would no know me if he saw me. I did not represent him, and never spoke to him except since I have been in the law business. Mr. Dettering came back in the early part of April, 1910. I saw him after he came in; he came right off the stage to my office. I talked to him about the settlement of the case; I remember the incident very well; he came into my office late in the afternoon, and said to me:

"Well, Henry, I see and hear you have settled everything. Did you hold out Asheim's half of the note," and I said, "No, because Asheim owes no half of the note as far as I know," and he said, "That almost ruins me," and he said, "Asheim signed a note and he is liable on the note," and I told him I had not inspected the note at the bank and the bank presented it for payment to me out of the Dettering account, and he insisted that Asheim had signed the note, and he and I right there and then went to the bank and asked Mr. Wesch to show us that note, and I then pointed out to him that he was the only one that had ever signed the de Journel's note. (St. p. 223.)

He had contended up to that time that Asheim was on the note too.

Q. And what was said, or was anything said, about where the gold dust had gone to at that time?

A. I explained fully to him what had been done, and I told him what had become of the gold dust, and he realized and claimed that the gold dust had been a security for this joint note. I explained to him that the gold dust was turned over to the other side, but that even if it had been security for this note, it would not hurt him any because of him being sole-

ly liable on the note, he would be liable to pay whether out of the security or out of his other funds. (St. p. 223.)

I never refused to tell him anything up to the time this suit was commenced, or even after it. I talked to him quite a number of times after that about this settlement; I have not covered up anything, and never made an attempt to cover anything up. He was informed at the time as to what portion of the gold dust was put to his account and what portion went to Asheim's account, and his bank account showed how much was deposited. I certainly talked to him about what was done with it, and what the $65,000 was deposited for; I told him that it was in settlement of the $17,500. That it was his share of the $17,500 in gold dust that was in litigation in this suit.

While Mr. Dettering was out here I did make an effort to ascertain from Mr. Dettering what, if anything, Asheim owed him. I addressed a wire to Mr. Dettering in care of Mr. Parsons here; I didn't keep a copy of the wire; that was sent in 1910. I had a talk with Mr. Dettering at that time about what was done at that ime, and when he informed me upon his return that Asheim was liable for half of the note I asked him why he did not answer my wire. I had taken the matter up with Asheim to find out what, if anything, Asheim admitted he owed Dettering. Mr. Dettering never told me before he left Alaska that he himself owned this gold dust, the $17,500, unless Asheim would pay him one-half of what he paid for it, viz: $2,750. There was never such a conversation as that when he came back; he never made the claim that I should have kept out all the gold dust unless Asheim should pay the $2,750. He never at any time from 1909 to the time the papers were served in this action made a demand for an accounting or statement showing how the case was settled or what was done with it. I never at any time denied him any information I had concerning the matter; it was gen-

erally known around the city of Fairbanks that this case was settled; everyone talked about it; it was in the newspapers; it is a small community. It would be the easiest thing in the world for Mr. Dettering to find out, if he wanted to, from the people in Fairbanks how this case was settled. I have examined the records and documents here; I have examined plaintiff's exhibit "D" a good many times. Fairbanks Precinct is located in the town of Fairbanks; the courthouse is there. I did not prepare plaintiff's exhibit "D" nor plaintiff's exhibit "E."

Q. I will change the question and ask you if it is a difficult thing to ascertain that that instrument is of record if a lawyer went to look for it?

A. Any person could find it and the recorder would find it for him if he could not find it himself. (St. p. 228.)

Judge Jennings and Judge Pratt are as good lawyers as any that could be found in the territory of Alaska. Plaintiff's exhibit "D" was gotten by me in November, 1913, in the city of Seattle. I dictated a statement in the office of Mr. Arthur Griffin; that statement was never presented to me up to the time it was presented here in court. I never read it over or checked it up; I have heard it read in court since. Roughly speaking the statements therein contained are correct, with this exception; perhaps I may explain that Mr. Griffin's stenographer seemed to have difficulty in understanding me, and there were quite a number of interruptions, and it may be possible that the lady left out a word or two.

A. Here it says I stated that "Mr. de Journel and his associate, Mr. Nye, also an attorney, commenced an action to enforce the specific performance of the contract referred to," that is the Klonos-Manson option, "as having been executed between Klonos and Asheim and Dettering, under which contract the $17,500 worth of gold dust was to be delivered to the

assignees of said Klonos, that is, to Asheim and Dettering." That is all right.

* * * * * * * * *

A. Here is a statement I want to explain somewhat. "While all these suits were pending, a compromise and adjustment was made between all of the parties under which compromise, if I remember correctly, Barnett and his associates paid $62,500.

* * * * * * * * *

A. Some short time ago I made a trip to Fairbanks to look at the bank records to refresh my memory, and I know positively every cent was turned into the bank, and the bank records show that we turned in $49,500, so I say as I corrected myself here, I say, "If I remember correctly, Barnett and his associates paid $6,500." (St. pp. 229-230.)

We held out for $62,500 for four weeks, and that is the amount we tried to get; we figured all those checks and that makes $36,500.

Q. Just glance through that exhibit and see what other corrections you want to make. * * * What changes you want to make from what is not correct to the correct statements?

A. Here, this is absolutely wrong: "It was agreed by all the parties in interest that the $17,500 was to be for Mr. Dettering and Mr. Asheim. It was agreed that the $17,500 should be deducted from the $62,500 and the remainder divided in accordance with the different interests held by the different parties." Now, I never stated that the $17,500 should be deducted from the total. I did not state that the settlement for the $17,500 should be subtracted from the total, because I always knew that we never received the full amount because the other party would gain nothing. If they paid us the full amount, it would not be a settlement. (St. pp. 230-231.)

I made the statement, which is plaintiff's exhibit "B," about two years ago now, at Juneau, when I was a member of the Alaska Legislature, and Mr.

Dettering came up to secure some information, and on the whole the statement is correct.

CROSS-EXAMINATION by MR. GRIFFIN:

Yes, I was in error in regard to the $62,500 statement, and I correct it. In view of the testimony that Wesch gives here, I say now that there was no slip attached to the gold dust in the Washington-Alaska Bank saying that the dust was being held as security for the $8,000 note. I am not certain when that $8,000 note was given, I don't know anything about it. I did state in that statement that the $17,500 in gold dust was being held as security for the $8,000 note and that was not true; I said that because Mr. Dettering told me that and I believed him. I did not have full knowledge of Mr. Dettering's affairs up there concerning the $8,000 note. When the power of attorney was given full power over everything that transpired from the time the power of attorney was given, and I was given preference in the matter of the gold dust over Mr. Nye. I did not see that the note was paid out of the gold dust because there was nothing to show that the gold dust was being held as security for the de Journel note. I did not know that such a note was in existence when this money was turned over. I did not know of the $8,000 note until Mr. Dettering came back and told me about it. I said in my statement that the $17,500 was held as security because you asked me to give a statement as near as I knew of the circumstances, and I gave you a statement as I learned it from Mr. Dettering and his side, and the other side, and gave you a statement. That was after the contention was disposed of.

Q. And you say there in this statement, "Meanwhile the promissory note executed by Asheim and Dettering was purchased by Mrs. de Journel and the new note was executed by Asheim and Dettering in favor of J. de Journel, the wife of Mr. F. de Journel,

after the modification of the decree in the Circuit Court of Appeals." You knew all about that?

A. I learned that subsequently. (St. p. 234.)

When Mr. Dettering went out he put me in charge of the business; it is true that he left the account of $9,000 and did not tell me about it. There were many things that he did not tell me, I dare say. He put his law business in my hands—his legal transactions. I have represented him in all of these law suits up to that time; I did not represent him as attorney in the suit for the recovery of the $17,500 in gold dust; I was acting for Mr. Nye in Mr. de Journel's stead. I represented him in the suit for $17,500 and I signed for the $13,000 in cash and I paid over one-half of it to Sam Asheim, knowing that he was entitled to it. Mr. Dettering did not pay the entire consideration for the $8,000 note. I don't know what he did with the $8,000. I did not know that he borrowed it from the New York Life Insurance Company. When Mr. Dettering returned he told me that he had signed a note for $8,000. I wish that he had told me before, and I could easily have kept Asheim's interest out of it. I was looking after his interests there. I ordered Asheim's share to be turned over to Asheim. I had previously wired Dettering to know what amount Dettering was owing Asheim, and I waited a reasonable time to hear from Mr. Dettering before paying over Asheim's share of the money; I waited a reasonable time—but not until I heard from him. I did not wait for his answer because I took it for granted that he had the telegram and he didn't require anything further and that there was nothing to answer.

Q. Did you send a tracer to find out whether the telegram had been received by him?

A. The United States Signal Corps inform you when you send a message, if it is not delivered, they send a message back or wire, "your wire of so and so not delivered."

I found that this message was delivered as I

presumed; I didn't know whether it was delivered or not. The fact that I got no return proves that it was delivered. I had full authorization to turn over the $6,500 to Mr. Asheim; I got that authority from Mr. Dettering when he left on the 19th of February, 1910; he told me that Asheim was the owner of one-half of the gold dust; he did not tell me that Asheim owed one-half of the note, and I didn't know that he did. His failure to tell me was probably an unfortunate oversight on his part. Dettering did not furnish a dollar to finance those suits except one-third of the attorney's fees, amounting to $500. I do not know what the $8,000 was borrowed for. Nobody knew that Mr. Manson represented their interest when they bought of Klonos a one-third interest in the No. 5. I learned it when they made the settlement.

Q. That Klonos, the owner, and Manson, the other party in interest having agreed upon that transfer, that left nothing against the $17,500, did it?

A. It left Cook, Ridenour, Barnett, McGinn and Sullivan. (St. p. 238.)

There could not be anything more substantial against the $17,500 than there was; there was an absolute claim of other people. If there was one claim not trumped up it was certainly the Fives. It was all bona fide litigation and the Circuit Court of Appeals sustained it, and their location is sustained.

Q. You said to me that the note was probably secured from Mr. Dettering with the understanding that Asheim should sign it, didn't you?

A. I believed that, yes, sir.

Q. You believed that then?

A. I believe it now. I believe that that $9,000 note ought to have been signed by Asheim.

* * * * * * * * *

A. I never believed anything else, and I believe it was an unfortunate oversight on the part of Mr. Dettering and on the part of de Journel not to get Asheim to sign the note, because it would have then

been an easy matter to have it paid at the time of the settlement. (St. p. 241.)

I came to that conclusion when I learned about the note, and I learned for the first time, and I believe now that Dettering lost one-half of that note and I believe that Asheim ought to have paid it. If I had had the faintest idea that Asheim owed half of the note, I would have been too gold to hold it. I did not keep the money because there was no reason for my thinking that he owed it. I telegraphed to Dettering because they were partners and they had little business transactions together. I know that they were partners; the same day that Mr. Dettering bought in No. 2 he gave a deed to Asheim for his half of his interest. I have no copy of that deed, but I have papers to prove it. It is signed by Mr. Dettering. I said that the gold dust was paid over to McGinn and he paid the money to Havery and myself. Asheim's one-half was paid to Asheim with Nye's consent. I did not make the statement shown on the instrument in hand writing where it says that Dettering, Asheim, Cascaden, Schick and Havery were interested in securing the $62,500 paid by Cook, Barnett and others; that is in your handwriting. (Griffin's.)

Mr. Dettering did not leave any of his papers with me. I did not wire Dettering before making the settlement because I had full control and he knew the amount we were going to receive and it was not necessary to get an authorization to settle because that was what he gave me the power of attorney for. He got a good, fair consideration, it was as good as I could get.

I kept no account whatever between Dettering and myself except $500 attorney's fees. A portion of the $6,500 and the $4,554.50 was drawn out before Dettering got there; there was drawn out on the 21st of February, $2,750, and on March 9th, $1,270; $9,500 was the total amount received in the damage suit by Mr. Dettering. I made the settlement for him and there were several others interested in it; I knew

what interest Asheim had in it; I did not know that Asheim ought to pay the note. I wish I had known it. Dettering and Asheim were partners; I did not wait until the other partner came in before authorizing Havery to pay the other partner because I represented the other partner—because I represented Mr. Dettering and he had directed me to do so.

On RE-DIRECT EXAMINATION, by MR. KANE, the witness further testified:

There never was any question at any time as to Mr. Asheim having a half interest in the gold dust. Mr. Dettering knew something about what the settlement would be before he left for the outside; I am quite sure that he did not know it would be $49,500, because we were holding out for $62,500; the sum had been discussed; now, I would not have consented to the settlement if I had not been driven into it by my own clients, and Gianakas coming to me and saying he was going to settle if we didn't all go together. When we came together all of my clients and all the people represented by Havery came down proportionately in the amount that they would take.

On RE-RE-DIRECT EXAMINATION, by MR. KANE, the witness testified as follows:

A. There is one thing that caused me to make a settlement in the gold dust, the $17,500, for $13,000 in cash; this gold dust had come out of Number Five Claim; it was in litigation, and the attorney for the clients was a gentleman by the name of Coosby, and he had died and here they were standing in court and no attorney, and I appeared for them when the proceedings were had, and it would have required the employment of attorneys, both in the lower court, and undoubtedly whichever side lost would have appealed the case, and it would have again required the employment of attorneys in the higher court, and I

thought, with the expenses of new counsel, and going to the expense of the litigation, that if we could receive $13,000 cash for the $17,500 gold dust, and settle it, that we were making an excellent settlement. That is all.

On RE-RE-CROSS EXAMINATION, by MR. GRIFFIN, the same witness testified as follows:

The $17,500 had no connection with the damage suit, except in this—that the other side refused to settle anything unless all was wiped out.

MR. KANE: With the exception of introducing these two documents, which are certified copies of the suit of Havery vs. Yarnell and Peterson, we will rest. The only purpose I have in introducing them is to show that they were instruments of record.

THE COURT: Well, that is already in the testimony.

MR. KANE: Then I rest. (St. p. 251.)

WILLIAM DETTERING, being called in REBUTTAL, testified as follows:

I never told Mr. Arndt or Mr. Havery that Sam Asheim was a partner of mine. I was present when Mr. Arndt was out at my home and he told me in the presence of Mrs. Dettering, in our home, that Mr. Roden had settled this suit contrary to the agreement signed by the owners to the effect that the suit should not be settled for less than $100,000.

VERONA W. DETTERING, called as a witness of the plaintiff, in REBUTTAL, testified as follows:

I have been married to Mr. Dettering since May 22, 1913. In 1910 I was in Washington with Senator Piles; I was one of his Secretaries. I have known Mr. Dettering for about twelve years. Mr. Arndt was out to our house twice somewhere between the holidays and the time we started suit against Mr. Roden; that was March 12th.

Q. Well, Mr. Arndt, while he was there, did he

state to Mr. Dettering in your presence that the defendant in this case had settled the damage suit in Alaska against the directions of the owners and in violation of an agreement that they had signed that the suit should not be settled for less than $100,000?

A. Yes, he said they made a very bad settlement—

MR. KANE: Wait a moment. I object to this as incompetent, irrelevant and immaterial.

* * * * * * * * *

THE COURT: Oh, let it stand. (St. p. 256.)

* * * * * * * * *

Q. Did he or did he not at that time say to Mr. Dettering in your presence that the defendant had settled the damage suit against the directions of the owners and against their agreement that it should not be settled for less than a hundred thousand dollars?

MR. KANE: We object to that as incompetent, irrelevant and immaterial.

THE COURT: She may answer.

MR. KANE: We will ask an exception.

THE COURT: Exception is allowed. (Witness excused.)

A. He did. (St. p. 257.)

MR. KANE: We rest, your Honor. I forgot to introduce that map and I want that introduced in the record.

MR. GRIFFIN: We have no objection.

THE COURT: It will be admitted. (St. p. 259.)

(The jury was then excused for a few minutes.)

MR. KANE: At this time, Henry Roden, the defendant in this action, first challenges the sufficiency of the evidence of the plaintiff to make out a case sufficient to go to the jury and asks for an order directing the jury to return a verdict for the defendant, and at this time the defendant Henry Roden, challenges the sufficiency of the evidence and, considering all the evidence that is now in, moves the court for an order directing the jury to return a verdict for the defendant upon the ground that the complaint fails to state

facts sufficient to constitute a cause of action against the defendant, and upon the further ground that there is a fatal variance between the pleadings and the proof in this case, and upon the ground that it appears from the complaint and the evidence of the plaintiff, and from all the evidence introduced in the rial, that the plaintiff has been guilty of laches and that the action has not been brought within the time allowed by law, and that it is barred by the statute of limitations, and upon the further ground that the uncontradicted evidence in the case now shows that the defendant Henry Roden has not violated any trust and has not done anything that is alleged as a wrong doing in the complaint which would constitute a cause of action by the plaintiff against him. That he has fully and fairly accounted for his acts which he did under a power of attorney executed by the plaintiff to the defendant, and that if there was any loss on the part of the plaintiff that it was an error of judgment on Mr. Roden's part and not any mistake or act for which he could be held accountable.

Now, if the Court please, turning to the complaint, we find this in paragraph four, and this covers practically the whole complaint. (Quoting from the Complaint.)

(Argument.)

THE COURT: I think I will submit it to the jury. It is always better to have the jury pass upon it if there is any question of fact at all.

(Exception requested and allowed.)

WHEREUPON, in furtherance of justice and that right may be done, the defendant presents the foregoing as his Bill of Exceptions, and prays that the same be allowed, settled, signed, and certified as provided by law.

Dated this 26th day of May, A. D. 1915.

HENRY RODEN, Defendant.

By FARRELL, KANE & STRATTON,

His Attorneys.

The matter of the settling and certifying of the foregoing Bill of Exceptions came on regularly to be heard this 12th day of June, 1915, both parties being represented by counsel present.

It appearing to the Court that on the 2nd day of April, 1915, this Court did make and enter an order extending the May term of this court up to and including this date for the purpose of serving, filing, certifying and settling the Bill of Exceptions in the above entitled action; it further appearing that the defendant has within the time prescribed by law and the rules and orders of this Court served and lodged with the plaintiff and with the Clerk his proposed Bill of Exceptions; that the plaintiff has announced to the Court that he has no amendments or objections to the bill proposed by the defendant. The Court having examined the defendant's proposed Bill of Exceptions, and being satisfied that the same and the proceedings connected therewith are correct and in conformity with the law, and that said proposed Bill of Exceptions together with plaintiff's exhibits A, B, C, D, E, and defendant's exhibits 1, 2, 3, to be and to comprise all of the testimony, facts, evidence and proceedings had or given at the trial herein.

Now, therefore, it is by the undersigned Judge of the above entitled court, who presided at the trial and over the proceedings of the above entitled action, ordered and certified that the foregoing which is the defendant's proposed Bill of Exceptions, be and the same is hereby signed, settled, and certified as the true Bill of Exceptions, and that the same together with plaintiff's exhibits A, B, C, D, E, and defendant's exhibits 1, 2, 3, includes and composes all of the facts, exhibits, evidence, testimony and proceedings introduced, heard or had at the trial of this action; that each and all of the exceptions here noted were taken at the trial of said cause, and the proposed Bill of Exceptions is correct and complete in all respects, and is hereby allowed, certified, settled, signed and made a part of

the record herein, and the same being settled, certified and signed is hereby ordered to be filed by the Clerk.

Signed: JEREMIAH NETERER, Judge.

Indorsed: Defendant's Proposed Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 12, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

MOTION.

Comes now the above named defendant and moves the Court for an Order extending the time in which the defendant shall be required to file his Bill of Exceptions herein, and granting to the defendant an extension of time up to and including thirty (30) days after the ruling of the Court upon the defendant's motion for a new trial.

Dated this 1st day of April, 1915.

FARRELL, KANE & STRATTON,
Attorneys for Defendant.

Indorsed: Motion. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 2, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS.

This matter coming on regularly upon the motion of the above named defendant, after due notice to the plaintiff, for an order extending the time in which to file a Bill of Exceptions herein, and the Court being fully advised in the facts, the law, and the premises;

Now, therefore, it is hereby ordered, adjudged and decreed that the time for filing or serving the proposed Bill of Exceptions on behalf of the defendant in the above entitled action is hereby extended up to and including thirty (30) days after the ruling of this

Court upon the defendant's Motion for a New Trial in the above entitled action, and for such purpose this term of Court is extended beyond the end of the present term.

Done in open Court this 2d day of April, 1915.

JEREMIAH NETERER, Judge.

Indorsed: Order Extending Time for Filing Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 2, 1915, Frank L. Crosby Clerk. By E. M. L., Deputy.

OPINION ON MOTION FOR NEW TRIAL.

ON MOTION FOR NEW TRIAL.
MOTION DENIED.
Griffin & Griffin, for Plaintiff.
Farrell, Kane & Stratton, for Defendant.
NETERER, District Judge.

I think the motion for new trial in this case should be denied. The matter was fully and fairly presented to the jury under the instructions of the Court, and I think there is evidence, if believed by the jury, upon which the verdict could be predicated. It isn't for me to weigh the evidence, and in view of the fact that there is some evidence, and it having been submitted to the jury and the jury having weighed the evidence and concluded with relation to it, I think that should be conclusive upon the Court.

The motion for new trial will therefore be denied.

JEREMIAH NETERER, Judge.

Indorsed: Opinion on Motion for New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 27, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

JUDGMENT.

This cause came duly and regularly on for trial before Honorable Jeremiah Neterer, one of the Judges

of the above entitled Court; the plaintiff appeared in person and by Griffin & Griffin, his attorneys; the defendant appeared in person and by Messrs. Farrell, Kane & Stratton, his attorneys; a jury was duly and regularly impaneled to try the cause, after which evidence was duly and regularly introduced by and upon behalf of the plaintiff and by and upon behalf of the defendant; arguments were made for the respective parties by their counsel, and the jury was thereafter given instructions applicable to said cause by the Court and retired in charge of sworn officers to consider their verdict; thereafter said jury returned in open Court, the attorneys for plaintiff and defendant being present, and returned their verdict, in favor of the plaintiff and against the defendant, for the full sum of $6,500, and said jury was thereupon polled at the request of the attorneys for the defendant and all twelve of the jury when their names were called made answer that said verdict returned was their verdict and the verdict of the jury.

Thereafter a petition for new trial was served and filed by the attorneys for defendant and said petition was brought on for hearing and argued by the respective parties and was thereupon taken under advisement by the Court, after which the Honorable Jeremiah Neterer filed his written opinion denying the defendant's petition for a new trial; to which order of ruling of the Court the defendant by his attorneys excepted and his exceptions were allowed by the Court. Whereupon the attorneys for plaintiff moved for judgment upon said verdict, and the Court being now fully advised grants said motion.

It is therefore ordered, adjudged and decreed by the Court that the plaintiff, William Dettering, do have and recover of and from the defendant, Henry Roden, the full sum of $6,500, together with interest on said amount at the legal rate from this date and together with his costs and disbursements herein to be taxed by the Clerk and that execution issued therefor.

To the rendering and entering of said judgment the defendant, by his counsel, excepts and his exceptions are allowed by the Court.

Done in open Court this 29th day of April, A. D. 1915.

JEREMIAH NETERER, Judge.

Indorsed: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 29, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

PETITION FOR ORDER ALLOWING WRIT OF ERROR.

To the HONORABLE JEREMIAH NETERER,
Judge of the District Court aforesaid:

Now comes HENRY RODEN, defendant in the above entitled action, by his attorneys, and respectfully shows that on the 26th day of March, 1915, a jury duly empaneled in the above entitled Court found a verdict against the said Henry Roden and in favor of William Dettering, the plaintiff herein, in the sum of $6,500.00, and upon said verdict a final judgment was entered on the 29th day of April, 1915, in the sum of $6,500.00, together with interest thereon from the 29th day of April, 1915, and for the plaintiff's costs and disbursements against the said defendant Henry Roden.

Your petitioner, Henry Roden, feeling himself aggrieved by said verdict and judgment entered thereon, in which judgment and verdict and the proceedings leading up to the same certain errors were committed to the prejudice of the said defendant, which more fully appear from the assignment of errors which is filed herewith, comes now and prays said Court for an Order allowing the said defendant to prosecute a Writ of Error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and pro-

vided; and that a Writ of Error do issue that an appeal in this behalf to said United States Circuit Court of Appeals aforesaid sitting at San Francisco, California, in said Circuit, for the correction of the errors complained of and assigned, be allowed; and also prays that an order be made fixing the amount of security and cost bond, which the defendant shall give upon said Writ of Error; and the defendant further prays that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit of Appeals, and your petitioner will ever pray.

Dated this 27th day of October, 1915.

FARRELL, KANE & STRATTON,
Attorneys for Defendant.

Copy of within petition received and due service of same acknowledged this 27th day of October, 1915.

GRIFFIN & GRIFFIN,
Attorney for Plaintiff.

Indorsed: Petition for Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL.

Comes now HENRY RODEN, defendant and plaintiff in error in the above entitled and numbered cause, and in connection with his Petition for a Writ of Error in this cause assigns the following errors which plaintiff in error avers occurred in the trial thereof, and upon which he relies to reverse the judgment entered herein as appears of record.

I.

The Court erred in considering the cause or any part thereof, and in entering judgment therein, because it affirmatively appeared from the files and proceedings that the defendant was at the commencement of the

action and at all the times mentioned in the Complaint, a resident and citizen of the Territory of Alaska, and remained such at all times after the commencement of the action and the filing of judgment herein, and that the plaintiff was at all of said time a resident and citizen of the State of Washington. That because of said facts the cause was not removable to the United States District Court for the Western District of Washington, Northern Division, and the said Court had no jurisdiction of the persons or the subject matter hereof.

II.

The Court erred in denying the challenge as to the sufficiency of the evidence and motion to dismiss and for an instructed verdict made at the close of all the evidence by the defendant Henry Roden, which motion and challenge is as follows:

MR. KANE: At this time, Henry Roden, the defendant in this action, first challenges the sufficiency of the evidence of the plaintiff to make out a case sufficient to go to the jury and asks for an order directing the jury to return a verdict for the defendant, and at this time the defendant Henry Roden challenges the sufficiency of the evidence and, considering all the evidence that is now in, moves the Court for an order directing the jury to return a verdict for the defendant upon the ground that the complaint fails to state facts sufficient to constitute a cause of action against the defendant, and upon the further ground that there is a fatal variance between the pleadings and the proof in this case, and upon the ground that it appears from the complaint and the evidence of the plaintiff, and from all the evidence introduced in the trial, that the plaintiff has been guilty of laches and that the action has not been brought within the time allowed by law, and that it is barred by the statute of limitations, and upon the further ground that the uncontradicted evidence in the case shows that the defendant Henry Roden has not violated any trust and has not done anything that is alleged as a wrong doing in the complaint which would

constitute a cause of action by the plaintiff against him. That he has fully and fairly accounted for his acts which he did under a power of attorney executed by the plaintiff to the defendant, and that if there was any loss on the part of the plaintiff that it was an error of judgment on Mr. Roden's part and not any mistake or act for which he could be held accountable.

Now, if the Court please, turning to the complaint, we find this in paragraph four, and this covers practically the whole complaint. (Quoting from the Complaint.)

(Argument.)

THE COURT: I think I will submit it to the jury. It is always better to have the jury pass upon it if there is any question of fact at all.

(Exception requested and allowed.)

(a) Because it affirmatively appears upon the record and pleadings and from all the proceedings that the Court had no jurisdiction of the parties or of the subject matter of the action, because the cause was between a citizen of the Territory of Alaska and the State of Washington, and was not removable to the United States District Court for the Western District of Washington.

(b) Because it affirmatively appears from the record and all of the evidence and proceedings that the action or any part thereof was not commenced within the time limited by law, and that both causes of action of the same and the whole thereof were barred by the statute of limitation of the Territory of Alaska.

(c) Because it affirmatively appears that if the plaintiff ever did have a cause of action against the defendant, the same and the whole thereof is barred by the laches of the plaintiff.

(d) Because there was insufficient evidence to prove the allegations of the plaintiff's first cause of action set forth in the plaintiff's Complaint, and because the evidence affirmatively shows that said allegations are untrue.

(e) Because there was insufficient evidence to prove the allegations of the plaintiff's second cause of action set forth in the plaintiff's Complaint, and because the evidence affirmatively shows that the said allegations are all untrue.

(f) Because the evidence fails to prove:

First—That the defendant conspiring with the defendants in said suit to wrong, cheat, and defraud the plaintiff, did unlawfully, wrongfully, and without authority and without the knowledge or consent of the plaintiff, take, assign away, and dispose of the said seventeen thousand five hundred dollars worth of gold dust then and theretofore on deposit in the said Washington-Alaska Bank; and

Second—And did wrongfully detain and fail to pay over to the plaintiff or to account to the plaintiff for said gold dust or any part or portion thereof or any part of the proceeds thereof; and

Third—And has at all times since the said 17th day of February wrongfully and untruthfully stated to and informed the plaintiff that he, the defendant, did not take, assign away or dispose of said gold dust and that he, the defendant, had nothing whatever to do with the taking, assigning away or disposing of said gold dust, and had no knowledge of what disposition was made of the same or any part or portion thereof; and

Fourth—And defendant has at all times detained and wrongfully failed to pay or to account for the proceeds of said gold dust so taken and disposed of or any part thereof.

Fifth—That the plaintiff did not become familiar with the assignment made by the defendant or with the transactions of the defendant on his behalf and under the power of attorney until December 20th, 1913, as alleged in plaintiff's Complaint, but on the other hand affirmatively shows that said allegations were not true and especially that the plaintiff was familiar with all of the defendant's transactions on his behalf and under

said power of attorney, a short time after said transactions had taken place, and sanctioned the same.

(g) Because it affirmatively appears from the evidence that:

First—"The defendant wrongfully, unlawfully and fraudulently informed and told the plaintiff that he, the defendant, had not signed away any right of the plaintiff to said gold dust; that he had nothing whatever to do with the taking, assigning away, or disposal of said gold dust; that he, the defendant, did not know who had taken the gold; that if the gold dust had been removed or taken from the bank it had been done without his (defendant's) knowledge or consent," as alleged in plaintiff's Complaint, but on the contrary, that said defendant fully apprised said plaintiff of all of his actions and especially of said assignment and doings under the power of attorney given by the plaintiff to the defendant.

Second—That the plaintiff was not deceived or misled to his damage by any statements of the defendant.

III.

Because there is a fatal variance between the allegations of the plaintiff's Complaint and the facts shown by the evidence.

WHEREFORE, The defendant and plaintiff in error prays that the judgment of said Court be reversed and that the District Court be directed to dismiss said case as prayed in the Answers therein, and for such other and further relief as to this Court may seem just and proper.

FARRELL, KANE & STRATTON,
Attorneys for Defendant and Plaintiff in Error.

Filed this 27th day of October, 1915.
FRANK L. CROSBY, Clerk.
ED M. LAKIN, Deputy.
Clerk of the United States District Court for the Western District of Washington, Northern Division.

I hereby acknowledge due and correct service of the foregoing Assignment of Errors this 27th day of October, 1915.
GRIFFIN & GRIFFIN,
Attorney for Plaintiff.

Indorsed: Assignment of Errors and Prayer for Reversal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

ORDER GRANTING WRIT OF ERROR AND FIXING AMOUNT OF BOND.

This matter came on regularly to be heard this day in open court, upon the Petition of the defendant, Henry Roden. It appearing to the Court that said Petition prays the allowance of a Writ of Error in the above entitled action, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and further prays that a transcript of the record and proceedings and papers upon which judgment was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and the amount of the Cost Bond be fixed by the Court, and that such other and further proceedings may be had as may be proper in the premises; it further appearing that the defendant Henry Roden has heretofore served upon the plaintiff and filed and presented to this Court his Assignment of Errors, and prayer for reversal, and has taken all steps necessary to entitle him to a Writ of Error,

Now, Therefore, This Court, having duly considered said Petition and said Assignment of Errors, and prayer for reversal, does hereby allow said Writ of Error and grants the relief prayed for in said Petition, and It is Now Ordered that the Bond of the defendant on said Writ of Error be and the same is hereby fixed at $250.00.

Jeremiah Neterer, Judge.

Indorsed: Order Granting Writ of Error and Fixing Amount of Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

COST BOND ON WRIT OF ERROR.

Know All Men By These Presents, That we, Henry Roden, defendant in the above entitled action, as principal, and The Aetna Accident and Liability Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and authorized to do business in the State of Washington, as Surety, are held and firmly bound unto William Dettering, plaintiff in the above entitled action, in the sum of $250.00, to be paid to said plaintiff William Dettering, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors, administrators, successors or assigns jointly and severally by these presents.

Sealed with our seals and dated this 27th day of October, 1915.

The Condition of the Above Obligation is such that Whereas, in the above Court and cause final judgment was rendered against the defendant Henry Roden and in favor of the plaintiff William Dettering in the sum of $6,500.00, with interest thereon at legal rate from April 29, 1915, and for his costs and disbursements incurred and expended, amounting to $57.45; and

WHEREAS, The said defendant has obtained from the said Court a Writ of Error and filed a copy thereof in the Clerk's office of said Court to reverse the judgment of said Court in said action, and a Citation, directed to the said William Dettering, plaintiff, is about to be issued citing him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden in San Francisco, in the State of California.

NOW, THEREFORE, If the said defendant, Henry Roden, shall prosecute the said Writ of Error to effect and shall answer and pay all costs if he fail to make good his plea, then the above obligation shall be void, otherwise to remain in full force and effect.

HENRY RODEN, Principal.
By J. H. KANE,
His Attorney in Fact.
And by FARRELL, KANE & STRATTON,
His Attorneys.

THE AETNA ACCIDENT AND LIABILITY COMPANY
By GEORGE W. ROURKE,
Its Resident Vice President.

Attest:
CHAS. M. DIAL, (Seal.)
Its Resident Assistant Secretary.

The above and foregoing bond, and the sufficiency of the Surety thereon is hereby approved by me this 27th day of October, 1915.

JEREMIAH NETERER,
Judge of the District Court of the United States for the Western District of Washington.

Indorsed: Cost Bond on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Oct. 27, 1915. Frank L. Crosby. By Ed M. Lakin, Deputy.

ORDER IN RE EXHIBITS.

It appearing to the Court that the parties hereto have stipulated that Plaintiff's Exhibits A, B, C. D and E. and Defendant's Exhibits 1, 2 and 3 need not be printed and that the originals of the same may be sent to the Circuit Court of Appeals; and

It further appearing that it is just and proper that the original Exhibits should go to the Circuit Court of Appeals and that the same need not be printed;

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED That Plaintiff's Exhibits A, B, C, D and E and Defendant's Exhibits 1, 2 and 3 in the above entitled action need not be printed and that the originals of the same may be sent to the Circuit Court of Appeals by the Clerk of this Court.

Done in open Court this 19th day of November, 1915.

JEREMIAH NETERER, Judge.

Indorsed: Order in re Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 19, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington.
Northern Division.

WILLIAM DETTERING, Plaintiff,
vs.
HENRY RODEN, Defendant.

No. 2726

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO ORIGINAL EXHIBITS.

United States of America, Western District of Washington—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of

Washington, do hereby certify that the hereto attached sealed package contains the original exhibits introduced and used upon the hearing and trial of the above entitled cause, as follows: Plaintiff's Exhibits A, B, C, D and E, and Defendant's Exhibits 1, 2 and 3; which said original Exhibits are herewith transmitted to the Circuit Court of Appeals, there to be inspected and considered together with the transcript of the record on appeal in the above entitled cause, which said exhibits are so transmitted pursuant to the order of the said District Court so directing, a copy of which said order will be found on page 139 of the record on appeal in said above entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this 13th day of December, 1915.

FRANK L. CROSBY,
Clerk U. S. District Court.

NOTICE TO PRODUCE.

To the above named defendant, and to Messrs. Farrell, Kane and Stratton, attorneys for the defendant:

You and each of you are hereby notified and will please take notice hereby that the plaintiff requires you to produce at the trial of said cause the following instruments in writing now in the possession of the defendant, to-wit:

First: That certain statement, writing or declaration made and signed by Sam Asheim at Fairbanks, Alaska, on or about the.....day of....., A. D. 1910, in which said Asheim admitted in writing that the plaintiff in this action, William Dettering, was a party in interest in that certain suit brought in the name of said Sam Asheim to recover the possession of seventeen thousand five hundred dollars in gold dust then on deposit in the Washington-Alaska Bank of Fairbanks, Alaska, and in which said Asheim acknowledged said suit was brought on behalf of himself and

said William Dettering, which said statement, writing and declaration was delivered to the defendant, Henry Roden, by the plaintiff, William Dettering, shortly before the time the plaintiff left Fairbanks, Alaska, to come to Seattle in the winter of A. D. 1910.

Second: That certain writing signed by Harry Hovery, Sam Asheim, James Cianekas, William Dettering and ——— Hilcher by which the defendant, Henry Roden, was authorized to settle the suit then pending brought in the interest of the persons in this paragraph above named against Henry Cook et al., to recover damages for gold dust which the defendants in said suit had wrongfully mined from mining properties, and by which writing the defendant, Henry Roden, was authorized to settle said suit for the sum of One hundred thousand dollars and for no sum less than said amount, and which writing was made in the fall or early winter of the year A. D. 1910, and was delivered to and left with the defendant Henry Roden.

ARTHUR E. GRIFFIN,
Attorney for Plaintiff.

Indorsed: Notice to Produce. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 23, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

NOTICE.

To the above named defendant and to Messrs. Farrell, Kane & Stratton, his attorneys:

You and each of you are hereby notified and will please take notice hereby: That an error was made by the plaintiff in answering certain interrogatories propounded by the defendant and answered by the plaintiff under oath and that the true and correct answers are as follows:

Answer to Interrogatory No. 2. I owned an undivided one-third interest in bench placer mining claim on the second tier and the right limit opposite the

lower half of Creek Claim No. 2, below Discovery on Dome Creek; also owned an undivided 1/12 interest in and to bench placer mining claim on the second tier and the right limit opposite the upper half of Creek Claim No. 2, below Discovery on Dome Creek, both of said interests acquired from John Klonas in 1908 by purchase. I also owned an interest in Bench Claim No. 5 on the right limit of Dome Creek to the extent of $17,500 gold dust mined from said claim by purchase and assignments of interests of Klonas in that certain option agreement made between said Klonas and one Mark Manson.

Answer to Interrogatory No. 3. Asheim and I each owned separately undivided interests in the placer mining claims described above. Our relations were those of separate owners of undivided interests in said claims. I cannot state positively what undivided interests were owned by said Asheim and my previous answer that he owned an undivided 1/8 may not be correct. My previous answer that I owned an undivided 1/8 was not correct. Sam Asheim would have owned an undivided one-half interest with me in placer claim No. 5 to the extent of $17,500 of gold dust if he had paid me one-half of the amount I paid to secure the right to said $17,500 of gold dust which he never did.

Answer to Interrogatory No. 4. The persons named were interested as part owners with me in the placer mining claims described in my answer to the 2nd Interrogatory, and Asheim would have owned an interest in the $17,500 of gold dust if he had paid for the same which Asheim never did.

Answer to Interrogatory No. 5. I believe I never owned any interest in the ground litigated in the suit referred to, but do not know the suit by its number.

Answer to Interrogatory No. 6. Answered by reference to preceding answer.

Answer to Interrogatory No. 11. I have no knowledge as to the numbering of any of the suits in

the District Court of the Territory of Alaska, Fourth Division, but I owned the interests set forth in these corrected answers and believe the suit referred to is one in which I was interested to the extent before described. I also had an agreement with all the other part owners by which said owners interested in said claims, except David Cascaden, were to pay me 15 per cent for financing said suit and paying the expenses incidental thereto. The defendant, Henry Roden, was my attorney in said suit I refer to and wrongfully settled it while I was away from Alaska for much less than he was authorized to settle or compromise said suit for.

Answer to Interrogatory No. 12. I have no knowledge as to the numbering of suits in the District of Alaska. I owned the interests described in answer to the second Interrogatory and believe the suit referred to involved my interests in the claims described.

Answer to Interrogatory No. 13. I received about $9,500 from the Washington-Alaska Bank after my return to Alaska about April, 1910, which I believe had been deposited in that bank to my credit by the defendant, Henry Roden.

ARTHUR E. GRIFFIN,
Attorney for Plaintiff.

Indorsed: Notice. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 23, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

NOTICE.

To the above named defendant and Messrs. Farrell, Kane and Stratton, attorneys for the defendant:

YOU AND EACH OF YOU Are hereby notified and will please take notice hereby that on the opening of Court at 9:30 a. m. on the 23d day of March, A. D. 1915, the plaintiff will move to amend his second amended complaint as follows, to-wit, by striking from

the fourth line of the fourth paragraph the following words: "and not otherwise representing the plaintiff."

ARTHUR E. GRIFFIN,
Attorney for Plaintiff.

Indorsed: Notice. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 23, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington.
Northern Division.

WILLIAM DETTERING, Plaintiff,
vs.
HENRY RODEN, Defendant.

No. 2726.

ORDER ENLARGING TIME.

Now on this 17th day of November, 1915, upon motion of Attorneys for Defendant, and for sufficient cause appearing, it is ordered that the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 31st day of December, 1915.

JEREMIAH NETERER, District Judge.

Indorsed: Order Enlarging Time to Send Transcript to Circuit Court of Appeals. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 17, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

STIPULATION AS TO RECORD.

It is hereby stipulated by and between the parties hereto through their respective attorneys that the following designated papers, together with plaintiff's Ex-

hibits A, B, C, D and E, and defendant's Exhibits 1, 2 and 3, Original Citation, Original Writ of Error, comprise all papers, exhibits, depositions or other proceedings which are necessary to the hearing on said cause in the United States Circuit Court of Appeals, and in preparing the record in return to said Writ of Error, copies of such papers only, and no others, need be included. In preparing such papers all captions, except the name of the paper, and all verifications except where specially noted herein may be omitted; all endorsements except to show the name of the paper and the date of filing and all matter upon the covers of said papers, together with the numbering upon the pages shall be eliminated.

1st. All papers comprised in Transcript on Removal which includes the following: Affidavit of Service, Complaint, Notice, Petition of Removal, Bond on Removal, Order of Removal, Certificate of Superior Court Clerk (with captions, verifications and endorsements).

2nd. Amended Complaint.

3rd. Demurrer to Amended Complaint. Opinion on Demurrer.

4th. Second Amended Complaint.

5th. Answer and Amended Answer to Second Amended Complaint.

6th. Notice to Produce.

7th. Verdict.

8th. Bill of Exceptions. Motion and Order extending time for filing Bill of Exceptions.

9th. Opinion on Motion for New Trial.

10th. Judgment.

11th. Petition for Allowing Writ of Error, with endorsements.

12th. Assignment of Errors and prayer for Reversal, with endorsements.

13th. Original copy of Writ of Error, with endorsements, captions and acceptances of service.

14th. Order granting Writ of Error, and fixing amount of bond.

15th. Cost Bond on Writ of Error.

16th. Citations with return of service, endorsements and captions thereon.

17th. Stipulation as to Record.

18th. Order referring to Exhibits.

19th. Notices filed March 23d, 1915.

Dated this 19th day of November, 1915.

ARTHUR E. GRIFFIN,
GRIFFIN & GRIFFIN,
Attorneys for Plaintiff.
FARRELL, KANE & STRATTON,
Attorneys for Defendant.

Indorsed: Stipulation as to Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 19, 1915. Frank L. Crosby, Clerk; By E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington.
Northern Division.

WILLIAM DETTERING, Plaintiff,
vs.
HENRY RODEN, Defendant.

No. 2726.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD, ETC.

United States of America, Western District of Washington—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing printed pages, numbered from 1 to 147, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of

said cause on Writ of Error therein, in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Defendant and Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return-folios at 15c	$ 68.55
Certificate of Clerk to transcript of record, 4 folios at 15c	.60
Seal to said Certificate	.20
Certificate of Clerk to Original Exhibits, 3 folios at 15c	.45
Seal to said Certificate	.20
Statement of cost of printing said transcript of record, collected and paid	~~144.00~~
	~~$214.00~~ $ 70.00

I hereby certify that the above cost for preparing and certifying said record, amounting to $70.00, has been paid me by Messrs. Farrell, Kane & Stratton, Attorneys for Defendant and Plaintiff in Error.

I further certify that I hereby attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 13th day of December, 1915.

(Seal) Frank L. Crosby, Clerk.

In the United States District Court for the Western District of Washington, Northern Division.

William Dettering, Plaintiff,

vs.

Henry Roden, Defendant.

No. 2726.

WRIT OF ERROR.

United States of America—ss.

The President of the United States of America, To the Judges of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because of the judgment and proceedings, as also in the rendition of the judgment of the plea which is in the said District Court before you, or some of you, between William Dettering and Henry Roden, a manifest error hath happened, to the great damage of the said Henry Roden, defendant, as is said and appears by the Complaint, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid, in this behalf, do command you, if any judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit, at the court-room of said Court in the City of San Francisco, in the State of California, together with this Writ, so that you have the same at the said place before the Justice aforesaid, within thirty (30) days

from the date of this writ, that the record and proceedings aforesaid being inspected the said Justice of the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 27th day of October, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States the one hundredth and thirty-ninth.

FRANK L. CROSBY, Clerk.
ED M. LAKIN, Deputy.
Clerk of the said District Court of the United States for the Western District of Washington.

The foregoing Writ is hereby allowed this 27th day of October, 1915.

JEREMIAH NETERER,
United States District Judge for the Western District of Washington.

Copy of the within Writ of Error received, and due service of same acknowledged this 27th day of October, 1915.

GRIFFIN & GRIFFIN,
Attorneys for Plaintiff.

Indorsed: Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

WILLIAM DETTERING, Plaintiff,

vs.

HENRY RODEN, Defendant.

No. 2726.

CITATION.

The United States of America—ss.

The President of the United States—To WILLIAM DETTERING, and his Attorneys—GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty (30) days from the date of this Writ, pursuant to the terms of a Writ of Error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein William Dettering is plantiff and Henry Roden is defendant; to show cause, if any there be, why the judgment in said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 27th day of October, A. D. one thousand nine hundred and fifteen, and of the Independence of the United States one hundred thirty-nine.

Dated this 27th day of October, 1915.

JEREMIAH NETERER,

United States District Judge presiding in the United States District Court for the Western District of Washington, Northern Division.

Attest: FRANK L. CROSBY, Clerk.
By ED M. LAKIN, Deputy.
Clerk of the United States District Court for the Western District of Washington.

I hereby acknowledge due and regular service of the foregoing Citation in the City of Seattle this 27th day of October, 1915.

GRIFFIN & GRIFFIN,
Attorneys for William Dettering.

RETURN ON SERVICE OF WRIT.

United States of America, Western District of Washington—ss.

I hereby certify and return that I served the annexed Citation on the therein-named Service made on William Dettering by serving Griffin & Griffin, Attys. of record for plaintiff, by leaving a certified copy with A. E. Griffin. Served A. B. Griffin, a member of the firm of Griffin & Griffin, by leaving a certified copy with A. E. Griffin, by handing to and leaving a true and correct copy thereof with A. E. Griffin, personally, at Seattle, Washington, in said District, on the 28th day of Oct., A. D. 1915.

JOHN M. BOYLE, U. S. Marshal.
By MORTON D. WAINWRIGHT,
Deputy.

Marshal's Fees, $4.12.

Indorsed: Citation. Filed in the U. S. District Court, Western District of Washington, Northern Division, Oct. 27, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.